



**Superstorm Sandy**

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## **Superstorm Sandy Technical Assistance Frequently Asked Questions (FAQs)**

### **General Questions**

#### **Q: Do we have to make a request to participate in the 10% match program?**

Applicants for the Sandy match program were preselected based on their Federal Emergency Management Agency (FEMA) Public Assistance (PA) participation. However, you must make a formal request to the Governor's Office of Storm Recovery (GOSR) and attend a mandatory training session.

#### **Q: Who is currently eligible for the program?**

All potential applicants that have eligible FEMA PA projects in the nine designated counties as follows: Greene, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster, and Westchester.

#### **Q: Why do we have the FEMA PA match program?**

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 USC 5121 *et seq.* (<http://www.fema.gov/robert-t-stafford-disaster-relief-and-emergency-assistance-act-public-law-93-288-amended>) provides the regulatory road map for the use of Federal resources to reimburse state and local government and its public authorities for expenses incurred in the event of a National Disaster.

On July 23, 2014, Governor Andrew Cuomo announced that the State of New York, through the Governor's Office of Storm Recovery would assist local municipalities and agencies and reimburse the cost of the FEMA PA program for their work in rebuilding back a stronger New York State to ease this burden at the local level.

**Q: How do I determine when the next round of meetings will begin?**

<http://stormrecovery.ny.gov/infrastructure>

**Q: What if I have a question about the program?**

Please feel free to email GOSR at the following email address:

[SANDYMATCH@storm.recovery.ny.gov](mailto:SANDYMATCH@storm.recovery.ny.gov).

**Q: For the 10% match reimbursement payment(s), will the Applicant have to initiate the process?**

Applicants must comply with all protocols including attending a mandatory training session.

**Q: Is there an initial form to fill out in order to be involved in the 10% match program?**

No. However, additional documentation may be requested after GOSR reviews your individual Project Worksheets (PW) in EMMIE.

**Q: Will there be some forms to fill out for the match payment?**

All Applicants will have to formally acknowledge that they have actually performed the work indicated on their PW(s). After this point, all Applicants should continue to work with DHSES.

**Q: What is the applicability of the CDBG-DR requirements for the following project Scenarios:**

**Scenario 1 - Completed Projects**

Because of Superstorm Sandy, I performed debris removal work that was completed in January of 2014. What applies to this Scenario?

- Davis-Bacon **does not** apply.

- Section 3 **does not** apply.
- M\WBE **does not** apply.
- Fair Housing **does not** apply.

For situations similar to Scenario 1, you will not be held accountable for obligations of which you were unaware. Therefore, you should seek reimbursement from Department of Homeland Security and Emergency Services (DHSES) through the normal channels.

### **Scenario 2 – Projects in Progress**

I've completed 50% of the work to clean out and replace the sewers impacted by Superstorm Sandy. What applies to this Scenario?

#### **For all future work moving forward:**

- Davis-Bacon **DOES** apply.
- Section 3 **DOES** apply.
- M\WBE **DOES** apply.
- Fair Housing **DOES** apply.

Because the project has not been completed, you must comply with all regulations for any and all work that has not yet been started. GOSR will assist you in officially determining exactly what phase your project is in so you are aware of what portion of the project must comply with the above CDBG-DR requirements.

### **Scenario 3 – Projects That Have Not Begun**

I am going to repair an elementary school damaged by Superstorm Sandy. What applies to this Scenario?

- Davis-Bacon **DOES** apply.
- Section 3 **DOES** apply.
- M\WBE **DOES** apply.

- Fair Housing **DOES** apply.

Because the work has not been performed, you will need to comply with all of the CDBG-DR regulations as presented. GOSR will assist you in complying with these regulations

#### **Scenario 4 – Equipment Purchases**

My fire truck was destroyed by floodwater and I need to purchase a new one. What applies to this Scenario?

- Davis-Bacon **does not** apply.
- Section 3 **does not** apply.
- M\WBE **DOES** apply.
- Fair Housing **does not** apply.

Because you have not yet purchased the replacement equipment, you should attempt to solicit bids from Minority- and Women-Owned Business Enterprises. GOSR can assist you with your efforts.

#### **Q: What are the next steps after today's training?**

1. GOSR will e-mail -- in PDF format -- all materials covered during the technical assistance session you attended today;
2. GOSR will be communicating with DSHSES and Department of Budget to prepare match payments as part of the program;
3. GOSR staff will communicate directly with each Applicant to ensure that the information on the PW has been captured correctly and is complete in EMMIE; and,
4. There will be **one more round of mandatory technical assistance trainings** for those who are eligible and interested in participating in the FEMA PA 10% match program. As stated above, these trainings are mandatory and, once you have attended per GOSR's satisfaction, you will begin the process from Step 1 above.

**Q: What is the expected timeframe for contacting applicants?**

The actual Sandy match outreach program has already begun. GOSR will conduct one more round of outreach to potential Sandy PA match applicants and then the program will close.

GOSR dollars are tied to the review of PWs and GOSR's acceptance of the necessary documentation to support applicants' 10% payment. Applicants can use the [SANDYMATCH@stormrecovery.ny.gov](mailto:SANDYMATCH@stormrecovery.ny.gov) email address to request updates after the proper documentation has been obtained.

**Q: Is there an effective date for the requirements and funds? For example, one project is just about to start and is currently undergoing bids now.**

Please see Scenario 2 above.

**Q: If we have projects that are not approved by FEMA, are they still eligible for this program?**

No. All projects must be eligible for the FEMA PA program. If a project becomes eligible for PA funding, it will also be eligible for the 10% match program.

**Q: If we have already been through the process with FEMA and the State, why would the State ask us to do this for another grant if the State is giving us the funds? The information is already available, correct?**

After GOSR has reviewed your FEMA application and you are in good standing, GOSR will only request any additional documentation needed to meet HUD CDBG-DR (match funds) requirements.

**Q: If a project is at the "punch card" stage, will we have to comply with all or some of the HUD regulations or will the project be considered complete at the time the HUD money was available and would be used?**

Please see Scenario above 1 above.

**Q: Will GOSR perform site visits?**

Yes, as part of our monitoring and compliance processes, the State of New York will be conducting monitoring and site visits. GOSR and the DHSES are currently engaged in conversations to minimize duplicative site visits.

**Q: Do these (civil rights) provisions apply to piggybacking?**

Yes, with the exception of specific categories such as Category A and Category B.

**Q: GOSR hired a consulting firm related to the Civil Rights obligations. Will this organization be available to help us?**

Yes.

**Q: Scenario 1, are those forms on the slide required?**

Forms would only be necessary if applicable. In Scenario 1, they are not.

**Q: If funds were not obtained or denied by FEMA, can those projects be part of this program?**

No. All projects must be eligible for the FEMA PA program. If a project becomes eligible for PA funding, it will also be eligible for the 10% match program.

**Q: Where are the applicable text and forms online?**

The text and forms can be found online at GOSR's "Infrastructure Sandy Public Match Information" page as found <http://stormrecovery.ny.gov/infrastructure>

**Q: Does the 10% match cover any insurance deductibles that were not paid by FEMA?**

No. The match program only provides local matches for costs incurred as delineated on the FEMA PW(s).

**Q: Will GOSR reach out to the municipalities to let them know that the funds have been paid?**

No. The program is designed to work with the existing DHSES reimbursement structure and all matching funds will be paid out per the DHSES program that you have already been utilizing.

If you have specific questions about your project, you may use the local match email address as found at [SANDYMATCH@stormrecovery.ny.gov](mailto:SANDYMATCH@stormrecovery.ny.gov) to ask specific questions about projects that are in progress.

**Q: May I have clarification on participant document retention?**

Yes, that information is available on our website "Infrastructure Sandy Public Match Information" <http://stormrecovery.ny.gov/infrastructure>

**Q: If money for a project has not been awarded by FEMA yet, can I still participate?**

Yes. If a project is eligible for FEMA match assistance but has not begun, it may be eligible for HUD CDBG-DR match assistance.

**Q: Our projects have been completed for 18 months. When can we expect full payment of the 90%? We have not received a response to this question from DHSES.**

This information can be provided to you directly from DHSES at <http://www.dhSES.ny.gov>.

## **Project Worksheet Questions**

**Q: The State is still writing our PWs. Will they take this all into account?**

Yes. If your PW is determined by GOSR to be eligible by FEMA, you will qualify for this program as long as you comply with all related FEMA, DHSES, GOSR and HUD CDBG-DR rules.

**Q: How will PW amendments be reimbursed?**

This information can be provided to you directly from DHSES at <http://www.dhSES.ny.gov>.

**Q: If FEMA approved a PW at 98% and the applicant received funds for the Federal share of the 98%, who will reimburse the remaining portion?**

The 10% CDBG-DR local match will (assuming it complies with all related FEMA, DHES, GOSR and HUD CDBG-DR rules).

**Q: What applies to PWs that are 406 mitigation eligible? Are the same requirements applicable? Does the match still apply to mitigation funds?**

If your 406 activities are included in your submitted PW(s), you will receive the 10% match. If your project is a 404, it follows different protocols and guidelines. Please contact [SANDYMATCH@stormrecovery.ny.gov](mailto:SANDYMATCH@stormrecovery.ny.gov) and a GOSR Program representative to speak to you directly about your project.

**Q: If you were paid partially (advanced payments) on your PW's, can you receive your HUD 10% match or do your PWs have to be paid in full?**

This is a cost reimbursable program. Costs can only be reimbursed if the Federal share has been paid and documented per GOSR's review process.

**Q: For each PW submitted, are we going to have different classifications?**

No. We will continue to use the FEMA category of work classifications.

**Q: Is Emergency Service PWs eligible for the 10% match?**

Please see Scenario 1 above.

**Q: If a bid specification has been awarded for a public works project and already approved by FEMA, how can the municipality be eligible for the 10%?**

Please see Scenario 2 above.

**Q: Will the Civil Rights dollar and threshold requirements apply to the entire project amount listed in the PW or only the CDBG-DR match portion? Additionally, is this per PW or for the total PW allocation amount for a particular municipality or county?**

Yes, the CDBG-DR requirements will be based upon the entire project amount. In addition, PWs will be analyzed on a PW-by-PW basis, not for the total municipality or county's activities.

**Q: It is my understanding that the PWs claiming reimbursement for donated resources are somehow tied into the non-Federal share. How will this affect the reimbursement amount from GOSR?**

Since the State is picking up the total non-federal share for Applicants, there is no local cost share for a local government to apply their donated resources credit towards.

## **EMMIE Questions**

**Q: How can we get access to EMMIE? Can the applicant get access to EMMIE to see what documents are on file?**

Yes, contact DHSES at <http://www.dhSES.ny.gov>.

**Q: How will GOSR be notified when a new PW is entered into EMMIE?**

GOSR will be notified weekly regarding the addition of new PWs.

**Q: What is a completed project? Completed in EMMIE or the project is actually completed?**

GOSR is working with FEMA and DHSES to document a project's beginning and completion. GOSR will work with each Applicant to verify what phase their project is currently in.

## **CDBG-DR Questions**

**Q: Is there a specific date that applicants must start complying with the additional HUD CDBG-DR requirements?**

Yes. Applicants must comply with the CDBG-DR requirements as of the date of GOSR's initial letter notifying them that they may be eligible for a match payment from the CDBG-DR funds.

**Q: Will the direct administrative costs included in the PW obligation be an eligible CDBG-DR match cost?**

Yes.

**Q: Will costs associated with compliance of the CDBG-DR requirements – such as hiring a consultant or firm to conduct the administration – be eligible for the CDBG-DR match?**

Applicants that believe that there will be additional costs associated with complying with the CDBG-DR requirements should contact GOSR directly.

**Q: Will the CDBG-DR rules be the same set of rules applied to other FEMA PA funds?**

The PA program will be governed by FEMA and DHSES' rules and regulations. On the other hand, the CDBG-DR requirements will be governed by HUD.

**Section 3 Questions**

Section 3 of the Housing and Urban Development Act of 1968, as amended, requires recipients using CDBG-DR funding for housing or other public construction to -- *the greatest extent feasible* -- provide job training, employment, and contract opportunities for low- and very-low income residents and businesses in connection with projects in their neighborhoods or communities.

Although recipients must comply with the State of New York statutory requirements on competitive bidding, ("lowest and best bid"):

- **30%** of the total number of new hires directly related to the GOSR CDBG-DR-funded project should be Section 3 residents; and,
- **10%** of the total dollar amount of all construction contracts directly related to the GOSR CDBG-DR-funded project should be awarded to Section 3 business concerns; or,
- **3%** of the total dollar amount of all non-construction contracts directly related to the GOSR CDBG-DR-funded project should be awarded to Section 3 business concerns.

**If a recipient does not have to hire any new employees, SECTION 3 DOES NOT APPLY. Section 3 only applies to new hires.**

For example, Contractor "X" needs to expand his current workforce to perform the contract awarded by Municipality "Y." Contractor "X" must, in order to comply with Section 3, perform outreach, training and hire individuals from within Municipality "X" or its neighboring regions.

**Q: Is the Section 3 requirement the responsibility of the Applicant or the Contractor?**

The Applicant, its Contractors and their Subcontractors all have to abide by the Section 3 requirements if utilizing CDBG-DR funds.

**Q: Do temporary workers qualify as Section 3 workers?**

Applicants are required, to the greatest extent feasible, to provide all types of employment opportunities to low and very low-income persons, including seasonal and temporary employment, as well as long-term jobs.

**Q: If we have already awarded a contract, can we assume that Section 3 contracting goals have been met?**

No. The award of a match payment from CDBG-DR funds is what obligates you to comply with the Section 3 contracting goals for the Applicant, its Contractors and their Subcontractors.

**M\WBE Questions**

The purpose of the Minority and Women-Owned Business Enterprise (M\WBE) Program is to allow all businesses the opportunity to participate in the rebuilding of New York by promoting equality of economic opportunities for M\WBEs .

GOSR, for purposes of procurement, follows the New York State established overall participation goal of 20% for Minority and Women-Owned Business Enterprises (M\WBE) participation, 10% for Minority-Owned Business Enterprises (MBE) participation and 10% for Women-Owned Business Enterprises (WBE) participation (based on the current availability of qualified MBEs and WBEs). For more information, please see New York Article 15-A of the Executive Law, as found at <http://www.esd.ny.gov/MWBE.html>.

Applicants and contractors can also post procurement opportunities on the Empire State Development website at <http://www.empire.state.ny.us>.

**Q: Will the M\WBE percentage remain at 20%, rather than the 30% announced by the Governor recently in October of 2014?**

Currently, the M\WBE goal is 20% utilization. If your project has started or will begin soon, it is likely that you will be grandfathered in to the 20% goal. Once the Governor has issued an amendment to Executive Law Article 15-A, any projects moving forward will have to adhere to the new percentage goal.

**Q: Do we include the M\WBE requirements in the bid documents?**

Yes. As discussed during the first round of technical assistance trainings, "Exhibit E" must be attached to all bid and final contracting documents. "Exhibit E" has specific language that addresses the M\WBE requirements.

**Q: If the prime contractor is not a M\WBE, but the prime has subcontractors who are M\WBE-certified, will this help meet the applicant's requirement?**

Yes.

**Q: What happens if the M\WBE contract bid is significantly higher than the other bids? Does the municipality have to accept that bid even though this would conflict with our procurement policy?**

No. Applicants should use their normal procurement criteria when evaluating prospective bids. However, it is permissible to make M\WBE participation a part of the scoring process when evaluating proposals.

**Q: Does M\WBE requirements apply to consultants?**

Yes.

## **Davis-Bacon Questions**

Title I of the Housing and Community Development Act of 1974 requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor, also known as the "prevailing wage determination") to all workers on GOSR construction projects in excess of \$2,000. The Davis-Bacon and Related Acts, apply to contractors and subcontractors performing on federally-funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.

For example, a construction PW is valued at \$19,000, but the match is \$1,900. Because the total CDBG-DR in the project is under \$2,000, is the project subject to Davis-Bacon wages? Yes, the threshold for Davis-Bacon applies to the total contract for construction which is \$19,000, not just the amount of CDBG-DR funds utilized for the match payment.

On the other hand, if a construction PW is valued at \$1,900. Does Davis-Bacon apply? No the total contract for construction is under \$2,000.

### **Q: Where can we get a copy of the Davis-Bacon Act and wage schedules?**

This information is posted on the "Infrastructure Sandy Public Match Information" page at <http://stormrecovery.ny.gov/infrastructure>

### **Q: Will specific wage determinations be provided for each specific project like the State's prevailing wage?**

No, you must use the link above <http://stormrecovery.ny.gov/infrastructure> to pull the most recent prevailing wage schedule.

### **Q: Will GOSR provide the documentation for the prevailing wage rates or will the applicant have to search for each wage decision?**

Please see the previous question.



## Sandy Local Match Program Technical Assistance Training

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### Contact Us

- For all questions, please e-mail us at:  
• [LOCALMATCH@stormrecovery.ny.gov](mailto:LOCALMATCH@stormrecovery.ny.gov)
- For FAQ's and all other information, visit:  
• <http://stormrecovery.ny.gov/infrastructure>.

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Goal of the training is to provide an introduction of the HUD required components that are not contained your FEMA PA program so that the State of New York can make your local match payments on your behalf and reimburse you for work completed

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## Monitoring & Compliance Overview

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### Today's Topics

Today, we will discuss four areas of CDBG-DR compliance as follows:

- Davis-Bacon
- Section 3
- Minority- and Women-Owned Business Enterprises (M\MBE)
- Fair Housing

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## Applicability Examples

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**Applicability – Scenario 1**

Because of Superstorm Sandy, I performed debris removal work that was completed in January of 2014. What applies to this Scenario?

- Davis-Bacon does not apply.
- Section 3 does not apply.
- M\WBE does not apply.
- Fair Housing does not apply.
- Debris removal is an eligible activity.

In Scenario 1, you should seek reimbursement from DHSES through the normal channels.

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**Applicability – Scenario 2**

My fire truck was destroyed by floodwater and I need to purchase a new one. What applies to this Scenario?

- Davis-Bacon does not apply.
- Section 3 does not apply.
- M\WBE does apply.
- Fair Housing does not apply.
- Equipment replacement is an eligible activity.
- In Scenario 2, you should seek reimbursement from DHSES through the normal channels.

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**Applicability – Scenario 3**

I am going to repair an elementary school damaged by Superstorm Sandy. What applies to this Scenario?

- Davis-Bacon does apply.
- Section 3 does apply.
- M\WBE does apply.
- Fair Housing does apply.

Because the work has not been performed, you will need to comply with all of the regulations presented today. GOSR will assist you in complying with these regulations.

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**Applicability – Scenario 4**

I've completed 50% of the work to clean out and replace sewers impacted by Superstorm Sandy. What applies to this Scenario?

For all future work moving forward:

- Davis-Bacon **does** apply.
- Section 3 **does** apply.
- M\WBE **does** apply.
- Fair Housing **does** apply.

Because the work has not been completed, you will need to comply with all of the regulations presented today. GOSR will assist you in complying with these regulations and determining how far long each project is so that these apply these regulations for remaining phases

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**GOSR Technical Assistance**

- As part of the State's process, GOSR will work with each applicant to identify what stage your Public Assistance project is in.
- Based upon this information, we will work with each applicant to develop an appropriate plan for you to remain in compliance with the topics we will discuss today.

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**Davis-Bacon Act**

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### What is the Davis-Bacon Act?

The Davis-Bacon Act (DBA) applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.

- Davis-Bacon is applicable to all laborers and mechanics employed by contractors and subcontractors.
- Contractors must submit a wage determination for all covered workers and categorizes prior to commencing work
- A Davis-Bacon wage decision is simply a listing of different work classifications and the minimum wage rates that must be paid to anyone performing work in those classifications.

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### What is a "Prevailing Wage"

- The Davis-Bacon "prevailing wage" is the combination of the basic hourly rate and any fringe benefits listed in a Davis-Bacon wage determination.
- The contractor's obligation to pay at least the "prevailing wage" can be met by paying entirely cash wages or through a combination of cash wages and employer-provided bona fide fringe benefits.
- Prevailing wages, including fringe benefits, must be paid to each covered employee for all hours worked on the applicable job site.

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### New York Prevailing Wage

- In some cases in which New York State Prevailing Wages and Davis-Bacon Prevailing Wages both apply. In such instances, the higher of the two will prevail.
- For assistance in determining which Davis-Bacon wage rates apply to a particular project, contact the GOSR CDBG-DR Division Labor Specialist, or contact the New York State Department of Labor at [www.labor.ny.gov](http://www.labor.ny.gov).

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### Contractor Requirements

- Contractors and subcontractors are required to pay covered workers weekly and submit weekly certified payroll records to the contracting agency.
- Contractors must maintain all payroll records for at least three (3) years.
- If a Contractor is found to be noncompliant, penalties and sanctions may be imposed.

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### Section 3 Overview

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### Section 3

**What is Section 3?**  
 Section 3 of the Housing and Urban Development Act of 1968 . . . ensures that employment and other economic opportunities generated by certain HUD financial assistance shall, *to the greatest extent feasible*, be directed to low- and very low-income persons.

**Section 3 Residents Include:** Public housing authority (PHA) residents. *Low* and *very-low* income persons in the area.

**Section 3 Businesses Include:** Businesses owned by Section 3 Residents or that employ the same.

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### GOSR Section 3 Contract Goals

- At least 30% of all NEW employees hired have to be Section 3 residents; **AND**
- At least 10% of the total dollar amount of all Section 3 covered contracts for housing rehabilitation, construction, and other public construction should be granted to eligible Section 3 businesses ; **OR**
- At least 3% of the total dollar amount of non-construction (e.g., professional services) contracts should be granted to eligible Section 3 businesses.

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### Section 3 Outreach Strategies

- Request current list of Section 3 eligible applicants and certified Section 3 businesses from housing authorities and other HUD CDBG-funded agencies.
- Advertise job and subcontracting opportunities in local, community papers and job boards in impacted areas and LMI communities.
- Utilize the recently created GOSR Local Workforce Opportunities Program to recruit and attract Section 3 eligible applicants for posted positions.
- Contact local community organizations (e.g. faith-based organizations, community centers, organizations that serve adult special needs population, etc.) and provide them with job postings for Section 3 eligible applicants.

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### Section 3 Outreach Strategies

(cont.)

- Partner with the NY Division of Employment and Workforce Solutions (<http://labor.ny.gov/dews-index.shtml>) to promote special advertisement of Section 3 job postings and opportunities.
- Clearly indicate on all job applications and websites for job postings that the position is "A Section 3 eligible job opportunity."
- Word-of-Mouth – ask others to refer qualified applicants to your firm.

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**Minority and Women-Owned Businesses (M\WBE)**

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**Minority and Women-Owned Business Enterprises**

- Article 15-A of the New York Executive Law (M\WBE Regulations) sets annual goals for direct and indirect contracting opportunities with certified minority-and women-owned business enterprises.
- Contractors must make a "good faith effort" to enter into a state contract (or subcontract) with a certified, small business that is 51% owned by a minority or woman with a contract value in excess of (1) \$25,000 for labor, services, equipment, materials, or any combination of the foregoing; or, (2) \$100,000 for real property renovations and construction.

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**GOSR M\WBE Utilization Goals**

As a GOSR applicant, there is a requirement to contract with qualified M\WBEs for a minimum of 20% of the contract value

- Goal of 10% to minority-owned businesses; and
- Goal of 10% to women-owned businesses.

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**GOSR's Office of Monitoring and Compliance**

Each successful applicant must submit a M\WBE Utilization Plan to Subrecipient during bid process and prior to the award of a State contract.

Each Subrecipient and Contractor must submit a **Quarterly Compliance Report** to [MWBE\\_EEOReports@stormrecovery.ny.gov](mailto:MWBE_EEOReports@stormrecovery.ny.gov). These are due by the 15th after the end of the quarter.

The four reporting quarters are:

- April 1st - June 30th (1st quarter due July 15th);
- July 1st - September 31st (2nd quarter due October 15th);
- October 1st - December 31st (3rd quarter due January 15th); and
- January 1st - March 31st (4th quarter due April 15th).

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**M\WBE Utilization Strategies**

- Search Empire State Development Corporation's (ESD) M\WBE website located at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=6478>;
- Provide direct communication channels (e.g. posting procurement opportunities on website) to local W\MBE professional organizations to assist in outreach;
- Unbundle contracts to make smaller procurement opportunities that M\WBEs will qualify for (e.g., lower bonding requirements; lower insurance requirements; #of years of prior experience, etc);

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**M\WBE Utilization Strategies**  
(cont.)

- Host "Meet the Prime" vendor outreach forums to connect M\WBEs to prime contract holders;
- Provide additional points in procurement scoring (weighted 5% -10%) for M\WBE inclusion;
- Submit procurement opportunities to ESD and other State agencies; and,
- Encourage M\WBE firms to submit bids and respond as prime vendors.

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**Fair Housing Compliance**

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**What Does Fair Housing Mean?**

The Federal Fair Housing Act\* extends a person's right to live in the housing of her/his choice free from discrimination as long as s/he has the means to do so regardless of:

- Race;
- Color;
- National origin;
- Religion;
- Disability; and,
- Familial status (defined as the presence of children under age 18)

\*42 U.S.C. 3601-19

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**New York Fair Housing Law**

The New York State Human Rights Law\* covers all the same characteristics as the Federal Fair Housing Act, but offers additional protections based upon:

- Creed
- Age
- Sexual Orientation
- Marital Status
- Military Status

\*New York State Executive Law Article 15 §§290-301

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## Fair Housing Impediments

The following are examples of impediments to Fair Housing:

- Refusing to rent, sell, finance, insure, or negotiate for housing;
- Zoning laws around transportation hubs could prohibit development of affordable housing;
- Relocation of a protected class to areas that lacks equal opportunities for access to green space and parks; and,
- Refusing to make or provide information for a loan, or imposing different terms or conditions for a loan.

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## Additional Civil Rights Obligations

- Title VI of the Civil Rights Act of 1964
- Limited English Proficiency
- Equal Employment Opportunities
- The Americans with Disabilities Act
- The Pregnancy Discrimination Act
- The Equal Pay Act of 1963 (EPA)
- The Age Discrimination in Employment Act of 1967
- The Genetic Information Nondiscrimination Act of 2008

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## Contract Requirements: Exhibit E

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**“Exhibit E”- Supplementary Conditions for Contracts**

- Pursuant to a contractual relationship yet to be determined among GOSR and its Federal and State partners, “Exhibit E” shall be incorporated into all contracts, subcontracts and lower-tiered subcontracts.
- “Exhibit E” must be a part of the bid packages for all contracts that are covered by CDBG-DR funds.
- With respect to the Davis-Bacon Act, all appropriate wage determinations shall be included in all bid packages, as applicable.

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**Other GOSR Required Forms**

- HUD-2516 Contract and Subcontract Activity (annually)
- HUD-60002 Section 3 Summary Report (quarterly)
- PROC 1 – EEO Staffing Plan (bid)
- PROC 2 – M/WBE Utilization Plan (bid)
- PROC 3 – Request for Waiver (bid if waiver sought)
- PROC 4 – M/WBE and EEO Policy Statement (bid)
- PROC 5 – Workforce Employment Utilization Report (quarterly)
- PROC 6 – M/WBE Quarterly Report (quarterly)
- PROC 8 – EEOC Statement (bid)
- HUD-4710 Semi-Annual Labor Standards Enforcement Report (semi-annually)
- WH-347 Federal Weekly Payroll Form (weekly)
- ADM-123 Cumulative Pay Statement (quarterly)
- ADM-146 Affirmation of Income Payments to MBE/WBE (quarterly)
- ADM-136 Monthly Employment Utilization Form (monthly)

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**GOSR Is Here To Help You!**

GOSR is available to assist you every step of the way to comply with the laws that we have discussed today.

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## Next Steps

- GOSR will be e-mailing in PDF format materials covered today to assist you in moving forward within the next week.
- GOSR will be communicating with DSHSES and Department of Budget to prepare match payments as part of the program.
- GOSR staff will communicate with each of you directly to validate that the PW's information contained in EMMIE .

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## Contact Us

- For all questions, please e-mail us at:
  - [LOCALMATCH@stormrecovery.ny.gov](mailto:LOCALMATCH@stormrecovery.ny.gov)
- For FAQ's and all other information, visit:
  - <http://stormrecovery.ny.gov/infrastructure>.

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## GOVERNOR'S OFFICE OF STORM RECOVERY

Andrew M. Cuomo  
Governor

James Rubin  
*Executive Director*



October 7, 2014

On July 23, 2014 Governor Andrew M. Cuomo announced that the State of New York would provide the local match for entities that are in the Superstorm Sandy Federal Emergency Management Agency (FEMA) public assistance (PA) program. As a participant in that program, you may be eligible to have the State cover your local match obligation. The funds that may be used to cover your local match obligation come from the United States Department of Housing and Urban Development (HUD) Community Development Block Grant Disaster Recovery (CDBG-DR) program and are managed by the Governor's Office of Storm Recovery (GOSR). GOSR has been working collaboratively with FEMA, the New York State Department of Homeland Security and Emergency Services (DHSES) and the New York State Division of Budget to create an efficient local match program and simplify the federal participation requirements.

Prior to paying the local match for your Sandy-related FEMA PA project(s), the State of New York needs to confirm your interest in having the state cover your match obligation. Please confirm via this email address [LOCALMATCH@stormrecovery.ny.gov](mailto:LOCALMATCH@stormrecovery.ny.gov) that you wish to be included in the program, and provide GOSR with a point of contact (Name, Title, email address, Telephone number) so that follow-up conversations and materials can be provided. You must respond by November 7<sup>th</sup> to be included in the program.

As a requirement of participation in the program, and to provide your local match share, you may need to provide GOSR with required documentation to ensure that your project complies with any and all applicable Federal and State regulations, including but not limited to the following HUD requirements: the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. part 5); Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (section 3); and taking all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible in accordance with 24 C.F.R. § 85.36 (e). GOSR will provide technical assistance to help you comply with the requirements.

In an effort to minimize the burden, GOSR will only request documentation after identifying that necessary items are not already in the FEMA PA database. Examples of items that may be necessary to submit to GOSR include: cancelled checks, executed contracts, invoices, receipts, procurement



## GOVERNOR'S OFFICE OF STORM RECOVERY

Andrew M. Cuomo  
Governor

James Rubin  
Executive Director



documents and payrolls. GOSR will also assist you in complying with applicable Federal and State regulations and will provide technical assistance, in-person trainings and written materials.

Upon receiving confirmation of your interest in the program, GOSR will schedule a follow-up telephone call to discuss the program requirements and to answer questions. We will also schedule an in-person meeting at your facility or in your area to discuss the process and finalize steps to have the State address your match obligations.

We look forward to receiving an email from you so that we can explain the FEMA PA match program in more detail and begin to put in place the processes necessary to have the State cover your local share obligations.

Sincerely,

Jamie Rubin  
Director  
Governor's Office of Storm Recovery

# HUD Subrecipient Guide to CDBG

## 1. Financial Reporting

Financial reports prepared by a subrecipient must be accurate, timely, current, and represent a complete disclosure of the financial activity and status in each Federal grant program under which assistance is received (24 CFR 85.20(b) and 85.41(c) and (d), or 84.21 and 24 CFR 570.502(b)(3)(i), as applicable).

Although the format and frequency of the financial reports required of subrecipients may differ from locality to locality, a subrecipient must have the capacity to provide at least the following information for each CDBG-DR activity:

- *Amount budgeted.*
- *Actual expenditures/disbursements* in the current period and cumulatively to date, for both program income and regular CDBG-DR grant funds.
- *Current encumbrances/obligations* in addition to disbursements.

In addition, a subrecipient's accounting and record-keeping system must be able to support the data included in (a) its drawdown requests and (b) its other financial and progress reports.

## 2. Procurement

The general requirements for procurement include the following:

- According to 24 CFR 85.36(b)(9), a subrecipient must maintain *records to detail the significant history of a procurement*. These records include, not are not limited to, files on the rationale for selecting the methods of procurement used, selection of contract type, the contractor selection/rejection process, and the basis for the cost or price of a contract (*for non-profit subrecipients, 24 CFR 84.46 specifies that procurement records and files for purchases in excess of the small purchase threshold fixed at 41 U.S.C. 403(ii), currently \$100,000, must include the basis for contractor selection, justification for lack of competition when competitive bids or offers are not obtained, and the basis for the award cost or price*).
- *Pre-qualified lists of vendors/contractors*, if used, must be current, developed through open solicitation, include adequate numbers of qualified sources, and must allow

entry of other firms to qualify at any time during the solicitation period (24 CFR 85.36(c)(4)).

- As part of its efforts to eliminate unfair competitive advantage, a subrecipient should *exclude contractors that develop or draft specifications*, requirements, statements of work, invitations for bids, and/or requests for proposals from competing for such procurement (24 CFR 84.43).
- A subrecipient must ensure that *awards are not made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation* in Federal assistance programs under Executive Order 12549, “Debarment and Suspension” (24 CFR 85.35).

### 3. General Recordkeeping Requirements

Every subrecipient is required to establish and maintain at least three major categories of records:

- **Administrative records:** These are files and records that apply to the overall administration of the subrecipient’s CDBG-DR activities. They include the following:
  - Personnel files, including salary scale, time records, and personnel contracts.
  - General program files: files relating to the subrecipient’s application to the grantee, the Subrecipient Agreement, program policies and guidelines, correspondence with grantee and reports, etc.
  - Legal files:, board minutes, contracts and other agreements.
- **Financial records:** These include the chart of accounts, a manual on accounting procedures, accounting journals and ledgers, source documentation (purchase orders, invoices, canceled checks, etc.), procurement files, bank account records, financial reports, audit files, etc.
- **Project/case files:** These files document the activities undertaken with respect to specific individual beneficiaries, property owners, and/or properties.

The general CDBG-DR standard for record keeping is that records must be *accurate, complete and orderly*. The files should provide a full description of each activity assisted with CDBG-DR funds, including the location where the activities occur, the amount of CDBG-DR funds

budgeted, obligated, and expended for the activity and the regulatory provision under which the activity is eligible.

### **File Organization and Maintenance**

A subrecipient should structure its project/case files and other records to comply with the general requirements specified above and to facilitate preparation of progress and other reports.

For each type of activity undertaken, a subrecipient in consultation with GOSR should determine the comparable data that must be maintained in the individual case files and establish a system for ensuring that every file contains the necessary information. Although the list will vary from activity to activity, each project or case file should include documentation of the National Objective being met, the characteristics and location of beneficiaries, the eligibility of the activity, the compliance with special program requirements, the allowability of the costs, and the status of the case/project.

### **Retention of Records**

To avoid monitoring findings and facilitate audit reviews, subrecipients are required to retain their records for extended periods of time, even though an activity may be completed for some time:

- For all subrecipients: 24 CFR 85.42 as modified by 570.502(a)(16), or 24 CFR 84.53(b) as modified by 570.502(b)(3)(ix) (A) and (B), as appropriate:

In general, records are to be retained for 5 years from the date of the grant closeout.

### **Access to Records**

- Representatives of the grantee, HUD, the Comptroller General of the United States, or of other authorized governmental agencies have the right of access to any pertinent records of a subrecipient to make audits, examinations, excerpts, and transcripts. (24 CFR 85.10 (e) and 84.53 (e))
- Consistent with applicable state and local laws regarding privacy and obligations of confidentiality, the subrecipient also must provide citizens with reasonable access to records on the past use of CDBG-DR funds (24 CFR 570.508).

## 4. OTHER ADMINISTRATIVE AND PROGRAM REQUIREMENTS

The Subrecipient is required to administer its CDBG-DR funds in compliance with the following Federal laws and Executive Orders, and implementing regulations:

- **Title VI of the Civil Rights Act of 1964 (Public Law 88-352 implemented in 24 CFR Part 1):** This law states that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- **Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (Public Law 90-234):** The Fair Housing Act prohibits discrimination in housing practices on the basis of race, color, religion, sex, and national origin. The Fair Housing Act was amended in 1988 to provide protections from discrimination in any aspect of the sale or rental of housing for families with children and persons with disabilities. The Fair Housing Act also establishes requirements for the design and construction of new rental or for-sale multi-family housing to ensure a minimum level of accessibility for persons with disabilities.
- **Executive Order 11063, as amended by Executive Order 12259 (implemented in 24 CFR Part 107):** This order and its implementing regulations require HUD to take all actions necessary to prevent discrimination because of race, color, religion, sex, or national origin in the use, occupancy, sale, leasing, rental, or other disposition of residential property assisted with Federal loans, advances, grants, or contributions.
- **Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et. seq.*):** This law provides that any grant under Section 106 shall be made only if the grantee certifies to the satisfaction of the Secretary of HUD that the grantee will, among other things, affirmatively further fair housing.
- **Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et. seq.*, particularly 42 U.S.C. 6101 *et. seq.*, and 29 U.S.C. 794):** This law mandates that no person on the grounds of race, color, national origin, sex, or religion shall be excluded from participation, denied the benefits of, or otherwise be subject to discrimination under any activity funded in whole or part with CDBG funds.
- **Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 1701u):** This section implemented at 24 CFR Part 135 requires that, to the greatest extent feasible, a subrecipient must:
  - Ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-DR-funded project is located; where feasible, priority should be given to low-

and very low-income residents within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

- Award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-DR-funded project is located; where feasible, priority should be given to business concerns which provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located and to low- and very low-income participants in other HUD programs.
- **Section 504 of the Rehabilitation Act of 1973, as amended (implemented at 24 CFR Part 135):** This section specifies that no otherwise qualified individual shall solely by reason of his or her handicap be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal assistance. Part 8 requires that recipients ensure that their programs are accessible to and usable by persons with disabilities. Part 8 also prohibits recipients from employment discrimination based upon disability.
- **The Americans with Disabilities Act (ADA) of 1990:** This law prohibits discrimination on the basis of disability in employment by state and local governments and in places of public accommodation and commercial facilities. The ADA also requires that facilities that are newly constructed or altered, by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and usable by persons with disabilities. The Act defines the range of conditions that qualify as disabilities and the reasonable accommodations that must be made to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities.
- **The Age Discrimination Act of 1975, as amended:** This law provides that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving Federal assistance.
- **Executive Order 11246 (as amended by Executive Orders 11375 and 12086) — Equal Opportunity Under HUD Contracts and HUD-assisted Construction Contracts:** This order requires that grantees and subrecipients and their contractors and subcontractors agree not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- **The Architectural Barriers Act of 1968:** The Architectural Barriers Act (ABA) of 1968 (ABA) (42 U.S.C. 4151-4157) requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility

financed in whole or in part with Federal funds, except privately owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG-DR funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards.

**Labor Standards (24 CFR 570.603)**

- All laborers and mechanics employed by contractors or subcontractors on construction work in excess of \$2,000 and financed in whole or in part with CDBG-DR funds must be paid “prevailing wages” that have been determined in accordance with the Davis-Bacon Act as amended (40 U.S.C. 276a–276a-5). The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333) also applies to such activities.
- These labor standards shall apply only to the rehabilitation of residential property if the property contains not less than eight (8) units.

Subrecipients are strongly encouraged to consult closely with their grantee during the planning of any construction or rehabilitation projects to assure that all the requisite labor standards will be properly observed. Grantees and subrecipients should pay particular attention to the technical complexities entailed in:

- Determining whether a project might be subject to Davis-Bacon requirements.
- Obtaining the appropriate prevailing wage rates and inserting the wage determination and the appropriate labor standards provisions in the contract.
- Requesting additional wage rate classifications that may not appear on a wage decision.
- Conducting an adequate pre-construction conference.
- Monitoring the work-site and contractor/subcontractor payrolls to document compliance with these requirements, including on-site employee wage interviews.

**Environment Requirements (24 CFR 570.604)**

In their use of CDBG-DR funds, grantees, such as GOSRare required to assume responsibility for environmental review, decision making, and other action that would otherwise apply to HUD under the National Environmental Policy Act of 1969 and other related provisions of law. The CDBG-DR regulations explicitly prohibit subrecipients from assuming the grantee’s environmental responsibilities (see 24 CFR 570.503(b)(5)(i)).

However, under the applicable regulations for any project receiving CDBG-DR assistance, no party involved with the project, including subrecipients, may commit funds to the project, including incurring project costs, until the grantee completes the appropriate environmental review and public notification

process, and HUD approves a certification of compliance with environmental laws and request for release of funds from environmental conditions. Activities not subject to this restriction are those the regulations define as exempt from environmental review. However, before any party involved with the project can incur costs, even for activities that are exempt, the grantee must first make a formal determination that the activity(ies) is exempt. (The list of activities that are exempt from environmental review are found in 24 CFR part 58.34 and 58.35(b).)

### **Historic Preservation**

Subrecipients must be careful not to violate provisions of the Historic Preservation Act and related laws and Executive Orders. Before commitments are made to make any physical improvements or alterations or to demolish any building, a subrecipient should receive assurances from the grantee that the grantee is in compliance with the Act.

Part of the grantee responsibility requires it to consult with the State Historic Preservation Officer as to whether the property: (1) is or could be declared a historic property; (2) is located in a historic district or an area which could be declared a historic district; and (3) involves proposed changes that could adversely affect historic properties or neighborhoods or properties or neighborhoods which could be declared historic.

If historic properties could be adversely affected, an agreement must be reached on appropriate mitigating measures with all parties identified in 36 CFR Part 800.

### **National Flood Insurance Program (24 CFR 570.605)**

If a community has had notice for more than a year that an area has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, CDBG funds cannot be spent for acquisition or construction purposes in the area unless the community is participating in the National Flood Insurance Program and such insurance has been purchased for the properties in question. *Note that there is a statutory prohibition against providing Federal assistance to a person who had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance and the person failed to obtain and maintain such insurance. (24 CFR 58.6(b)).*

### **Floodplain Management**

Subrecipients should select sites that are located outside of special flood hazard areas for projects proposing new construction or substantial improvement of existing buildings. Executive Order 11988, Floodplain Management, directs agencies "to avoid direct or indirect support of floodplain development wherever there is a practicable alternative" (24 CFR Part 55).

Note that the guidance relating to environmental requirements is available on the HUD Web site at: <http://www.hud.gov/offices/cpd/environment/index.cfm>.

**Political Activity** (24 CFR 570.207(a)(3))

A subrecipient is prohibited from using CDBG-DR funds to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as sponsoring candidate forums, distributing brochures, voter transportation, or voter registration. However, a facility originally assisted with CDBG-DR funds may be used on an incidental basis to hold meetings, candidate forums, or voter registration, provided that all parties and organizations have access to the facility on an equal basis and are assessed equal rent or use charges, if any.

**Conflict of Interest** (24 CFR 570.611; 24 CFR 85.36; and 24 CFR 84.42)

There are two sets of conflict of interest provisions applicable to activities carried out with CDBG-DR funding. The first set, applicable to the procurement of goods and services by subrecipients, is the procurement regulations located at 24 CFR 84.42 and 85.36. (See 24 CFR 570.611(a)(1).) The second set of provisions is located at 24 CFR 570.611(a)(2). These provisions cover situations not covered by parts 84 and 85.

With respect to procurement activities, the subrecipient must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. At a minimum, these standards must:

- Require that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for an award:
  - an employee, officer, or agent of the subrecipient;
  - any member of an employee's, officer's, or agent's immediate family;
  - an employee's, agent's, or officer's partner; or
  - an organization which employs or is about to employ any of the in the preceding section.
- Require that employees, agents, and officers of the subrecipient neither solicit nor accept gratuities, favors, or anything of value from contractors, or parties to subagreements. However, subrecipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
- Provide for disciplinary actions to be applied for any violations of such standards by employees, agents, or officers of the subrecipient.

With respect to all other CDBG-DR-assisted activities, the general standard is that no employee, agent, or officer of the subrecipient, who exercises decision-making responsibility with respect to CDBG funds and

activities, is allowed to obtain a financial interest in or benefit from CDBG activities, or have a financial interest in any contract, subcontract, or agreement regarding those activities or in the proceeds of the activities. Specific provisions include that:

- This requirement applies to any person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, a designated public agency, or a subrecipient, and to their immediate family members, and business partner(s).
- The requirement applies for such persons during their tenure and for a period of 1 year after leaving the grantee or subrecipient organization.
- Upon written request, exceptions may be granted by HUD on a case-by-case basis, after consideration of the cumulative effect of various factors listed at 24 CFR 570.611(d), and only with: (a) full disclosure of the potential conflict, and (b) a legal opinion of the grantee's attorney that there would be no violation of state or local laws in granting the exception.

**Program Monitoring** (24 CFR 570.501(b), 24 CFR 85.40(a) and (e), and 24 CFR 84.51(a))

A grantee, such as GOSR is responsible for ensuring that all CDBG funds under its oversight are used in accordance with all program requirements, and for determining the adequacy of its subrecipients' performance. Accordingly, the grantee is empowered to make site visits and review program files as necessary to fulfill these responsibilities.

**Governor's Office of State Recovery  
Housing Trust Fund Corporation  
FEMA-PA Match Project Review Assistance  
CDBG Checklist**

**Recovery Rationale**

- Project Narrative

**FEMA Documentation**

- Original Project Worksheet  
 Attachments Cover Page  
 Sandy REC Report (FEMA ERR – Sandy)

**Procurement (24 CFR 85.36)**

**Small Purchase (projects less than \$100,000)**

- Documentation of Price Quotes  
 Documentation of Selection and Cost

**Professional Services**

- Statements of Qualifications and/or Cost Proposals (when applicable)  
 Affidavit(s) of Proof(s) of Publication of Solicitation or proof of alternate method of publicizing  
 Responses to RFP/RFQ  
 Copy of Rating/Scoring Sheet(s)  
 Cost Reasonableness Review  
 Executed Contract for Services and Any Amendments to Contract for Services  
 Contractor Clearance/Verification of Contractor Eligibility (SAMs- Federal Debarment Clearance)

**Environmental Clearance (24 CFR Part 58, 78 Federal Register 14329)**

**Sandy**

- FEMA ERR  
 GOSR Letter of Acceptance –FEMA ERR

**Financial Management**

**(Combination of elements listed below, as applicable; not all are required)**

- Budget  
 Requests for Payment  
 Invoices/vouchers

- Cancelled checks
- Receipts
- Proof of payment

**Construction**

- Special studies, surveys, investigations, tests results, et cetera, as applicable
- Design documents and cost estimates
- Advertisements for bids
- Invitation to Bid
- Plans and Specs
- Bid documents
- Permits
- Minutes of public bid opening
- Tabulation of bids with copy of the bid proposal and bid bond submitted by each bidder
- Bidder qualification information
- Notice of award of the contract to the lowest responsible bidder
- Executed Contract for Services
- Notice to Proceed, If Required
- Evidence of contractor verification of eligibility and approval
- Architect/engineer inspection reports or project status reports, field measurements and test results
- Records of claims, disputes, et cetera
- Change orders with supporting documentation and justification
- Final inspection and acceptance of project
- Clear lien certificate and final payment to contractor
- Certificate of substantial completion

**Labor Compliance (28 CFR Parts 1,3,5-7; HUD Handbook 1344.1) – add**

**FA info**

- Project Wage Decision
- Request for Additional Classification and Rate, if applicable
- Documentation of 10-Day Call
- Verification of Contractor Eligibility
- Contractor's and Subcontractor's Weekly Payrolls and Statement of Compliance
- Evidence of Apprenticeship/Trainee Registration and Certification, if applicable
- Payroll Deduction Authorization Forms, if applicable
- Documentation of Resolution of Labor Compliance Issues Including Evidence of Restitution, if Any;
- Force account activity documentation (labor, equipment, materials)
- Davis Bacon/Prevailing Wage

## **Civil Rights**

### **Equal Opportunity**

- Documentation of Good Faith effort to further Equal Opportunity in all employment and procurement efforts;
- DBE Reports
- Designation of 504 coordinator and public notification for all recipients with fifteen (15) or more employees (Reference 24 CFR Part 8)
- Documentation of actions taken to affirmatively further Fair Housing (Reference 24 CFR Part 100.5)
- Recruitment of MWBE and WBE
- NYS compliance MWBE documentation

### **Section 3 (24 CFR Part 135)**

- Documentation of Good Faith Efforts to solicit Section 3 business concerns in bidding process;
- Section 3 Plans from professional firms, contractors, and subcontractors (with contracts over \$100,000);
- Section 3 Certification from all firms, contractors, and subcontractors (with contracts over \$100,000);
- Certification of Subcontractor Regarding Section 3 and Segregated Facilities;
- Contractor's/Subcontractor's Existing Employee Information Form;
- Contractor's/Subcontractor's New Employee Information Form;
- Documentation of Contractor's "Good Faith" Effort to Employ Section 3 Residents;
- Section 3 Reports

**SAMPLE CHECKLIST**

\_\_\_\_\_ **Procurement Policy**

\_\_\_\_\_ **Payroll Policy (Employee Contracts or Union Contracts)**

\_\_\_\_\_ **Timesheets ((Following PW's Only)**

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\_\_\_\_\_ **Bid Documents (Following PW's Only)**

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\_\_\_\_\_ **Contracts (Fully Executed, Following PW's Only)**

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\_\_\_\_\_ **Canceled Checks**

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\_\_\_\_\_ **Invoices**

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\_\_\_\_\_ **Other**

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## GOVERNOR'S OFFICE OF STORM RECOVERY

Andrew M. Cuomo  
Governor

James Rubin  
Executive Director



### EXHIBIT E

## SUPPLEMENTARY CONDITIONS FOR CONTRACTS

### Pursuant to Community Development Block Grant Disaster Recovery Subrecipient Agreement

#### Instructions for Subrecipient

- (1) Pursuant to the Subrecipient Agreement, these Supplementary Conditions shall be incorporated into all contracts, subcontracts and lower-tiered subcontracts issued under the Subrecipient Agreement. Accordingly, Subrecipient shall:
  - a. Incorporate these Supplementary Conditions into all contracts under this Subrecipient Agreement;
  - b. Require all contractors to incorporate these Supplementary Conditions in all subcontracts; and
  - c. Require all contractors to require their subcontractors incorporate these Supplementary Conditions in all lower-tiered subcontracts.
- (2) Subrecipient shall include this package of Supplementary Conditions as part of the bid packages for all contracts, with the following information added to the Introductory Statement:
  - a. Fill in Project, Project Location, Subrecipient name and address, and Contract Number on the first page of the Introductory Statement.
  - b. Fill in Subrecipient name in the signature block on the second page of the Introductory Statement.
  - c. Attach Insurance Requirements for the Project as Attachment A to the Introductory Statement.
- (3) With respect to the Davis-Bacon Act, Subrecipient shall include appropriate wage determinations in all bid packages, as applicable.
- (4) As part of the bidding process, Subrecipient shall collect the following from all bidders (PROC forms included in Part 6):

- a. Introductory Statement, with bidder's name and address filled in where Contractor's name and address is required, executed by bidder. Per Instruction No. 6, Subrecipient need not execute until a bidder is selected, whereby Subrecipient shall execute with other contract documents.
- b. Form PROC-1 (EEO Staffing Plan);
- c. Form PROC-2 (M/WBE Utilization Plan); and
- d. Form PROC-3 (Request for Waiver Form) – if a waiver is sought.

Subrecipient shall appropriately consider in its award decision the information provided in the above referenced forms as indicia of the bidders' ability to comply with related terms of the prospective contract.

- (5) Upon execution of a contract, Subrecipient shall execute and date the Introductory Statement, and Contractor shall execute the following forms (included in Part 6):
  - a. Form PROC-4 (M/WBE and EEO Policy Statement); and
  - b. Form PROC-8 (EEOC Statement).
- (6) Following execution of a contract, Contractor shall complete and submit the forms included in Part 6 pursuant to the instructions set forth on the forms. Of note:
  - a. The following form is required to be completed weekly and retained:
    - i. Form WH-374 (Federal Payroll Form) – As of September 11, 2014, this form is available at <http://www.dol.gov/whd/forms/wh347.pdf>.
  - b. The following forms have quarterly submission requirements, as set forth in their instructions (except as indicated below):
    - i. Form PROC-5 (Workforce Employment Utilization);
    - ii. Form PROC-6 (MWBE Quarterly Report);
    - iii. Form ADM-123 (Cumulative Payment Statement);
    - iv. Form ADM-146 (Affirmation of Income Payments to MBE/WBE); and
    - v. Form HUD 60002 (Section 3 Summary Report) – which shall be completed quarterly notwithstanding the annual reporting requirement set forth in its instructions.
  - c. The following form has monthly submission requirements, as set forth in its instructions:
    - i. Form ADM-136 (Monthly Employment Utilization Form).

- d. The following form has annual submission requirements, as set forth in its instructions:
    - i. Form HUD 2516 (Contract and Subcontract Activity).
  - e. The following form has semi-annual submission requirements and should be submitted to Monitoring and Compliance, Governor's Office of Storm Recovery, 25 Beaver Street, New York, NY 10004:
    - i. Form HUD 4710 (Semi-Annual labor Standards Enforcement Report) – Fillable form available at <http://www.hud.gov/offices/adm/hudclips/forms/hud4.cfm>.
  - f. There is no Form PROC-7.
- (7) Subrecipient shall instruct all contractors to follow these instructions for all subcontracts and lower-tiered subcontracts.
- (8) Due to the funding nature of the Subrecipient Agreement, both federal and state requirements are required to be flowed down to contractors and subcontractors at all tiers as delineated in this Exhibit E. As a result:
- a. References to any federal or state entity, such as the State of New York or HTFC, shall be construed as follows:
    - i. For contracts – references to any federal or state entity shall refer to the Subrecipient that is procuring goods and/or services under the subject contract. However, the term shall not be construed to refer to the Subrecipient in those instances where a provision relates to a right or activity that is of a governmental nature (e.g., enforcement of laws, audit rights, etc.). If the Subrecipient is a unit of governmental authority (e.g., a state, county, or local government entity), references to the federal or state entity shall be construed to encompass the governmental Subrecipient, as well as applicable federal or state entities.
    - ii. For subcontracts (at all tiers) – references to any federal or state entity shall refer to the contractor or higher-tiered subcontractor that is procuring goods and/or services under the subject contract. However, the term shall not be construed to refer to the contractor or higher-tiered subcontractor in those instances where a provision relates to a right or activity that is of a governmental nature (e.g., enforcement of laws, audit rights, etc.).
  - b. References to “Subrecipient” and “contractor” shall be construed as follows:
    - i. For contracts – references to “Subrecipient” shall be deemed to refer to the contractor, and references to “contractor” shall be deemed to refer to the applicable subcontractor.

- ii. For subcontracts (at all tiers) – references to “Subrecipient” shall be deemed to refer to the applicable subcontractor, and references to “Contractor” shall be deemed to refer to the applicable lower-tiered subcontractor.

**Governor's Office of Storm Recovery  
Supplementary Conditions for Contracts**

**INTRODUCTORY STATEMENT**

“Project” or “Program”: [Insert]

Project Location: [Insert]

“Subrecipient”: [Insert Name and Address]

“Contractor”: [Insert Name and Address]

Contract Number: [Insert]

“Insurance Requirements”: See Attachment A to Introductory Statement

Housing Trust Fund Corporation (“HTFC” or “Grantee”), acting through the Governor’s Office of Storm Recovery (“GOSR”) has entered into a Subrecipient Agreement with the Subrecipient for a grant of Community Development Block Grant Disaster Recovery (“CDBG-DR”) funds for purposes of the design and construction of the Project (the “Subrecipient Agreement”). This grant represents a portion of CDBG-DR funds received or to be received under the Federal CDBG-DR program administered by the U.S. Department of Housing and Urban Development (“HUD”) to fund necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure, and housing and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared due to Hurricane Sandy and other eligible events (subject to the Federal statutes and regulations governing CDBG grants, as modified by exceptions and waivers previously or hereafter granted by HUD).

Subrecipient is a municipal government or other government agency, which will use its own form contracts and other project agreements for the Project. However, as a condition to receiving CDBG-DR funds for the Project, Subrecipient is required to include these Supplementary Conditions in each contract which it enters into for the applicable project and to require all contractors to include these Supplementary Conditions in every subsequent subcontract and lower-tiered subcontracts so that such provisions are binding upon each contractor, subcontractor and lower-tiered subcontractor. Among other things, as set forth more specifically below, these Supplementary Conditions (a) include GOSR requirements which may not otherwise be included in the contract; (b) define the order of precedence for the interpretation and enforcement of the various parts and provisions of the contract (including these Supplementary Conditions); and (c) add certain other provisions which GOSR deems necessary or desirable for the orderly administration and enforcement of the contract. For purposes of subcontracts, references in these Supplementary Conditions to “Subrecipient” shall be deemed to refer to Contractor, and references to “Contractor” shall be deemed to refer to the applicable subcontractor. For purposes of lower-tiered subcontracts, references in these Supplementary Conditions to “Subrecipient” shall be deemed to refer to the applicable subcontractor, and references to “Contractor” shall be deemed to refer to the applicable lower-tiered subcontractor.

Accordingly, Subrecipient and Contractor have signed below to evidence their agreement to (a) incorporate into the contract these Supplementary Conditions (which shall be deemed “Contract Documents” under the contract), (b) include these Supplementary Conditions in all subcontracts under the contract, and (c) require that all subcontractors reproduce these Supplementary Conditions in all lower-tiered subcontracts under the contract. By signing below, contractor agrees to comply with the terms and

conditions of these Supplementary Conditions and to complete and submit the forms contained herein as required under these Supplementary Conditions and the instructions on the forms. Contractor hereby certifies, affirms, stipulates, represents and warrants to all provisions contained herein requiring such certification, affirmation, stipulation, representation or warranty, as applicable.

DATE: \_\_\_\_\_

SUBRECIPIENT  
[INSERT SUBRECIPIENT NAME]

By: \_\_\_\_\_  
Name:  
Title:

CONTRACTOR  
[INSERT CONTRACTOR NAME]

By: \_\_\_\_\_  
Name:  
Title:

Attachment A to Introductory Statement

INSURANCE REQUIREMENTS

[Insert or attach Insurance Requirements]

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*Establishes the priority of the requirements set forth within the Parts of these Supplementary Conditions and the priority of these Supplementary Conditions with respect to the remainder of the contract.*

PART 2 COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY SUBRECIPIENT AGREEMENT – REQUIRED TERMS FOR CONTRACTS (“REQUIRED TERMS”)

*Sets forth the required contract language to be inserted into the contract and all subcontracts under the contract to satisfy the requirements of the Subrecipient Agreement.*

PART 3 HUD GENERAL PROVISIONS

*Sets forth the HUD requirements applicable to the contract and all subcontracts under the contract pursuant to the Subrecipient Agreement.*

PART 4 PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN REQUIREMENTS AND PROCEDURES FOR CONTRACTS WITH HTFC (“HTFC M/WBE REQUIREMENTS”)

*Sets forth the HTFC M/WBE requirements applicable to the contract and all subcontracts under the contract pursuant to the Subrecipient Agreement.*

PART 5 STANDARD CLAUSES FOR CONTRACTS WITH THE HOUSING TRUST FUND CORPORATION (“HTFC STANDARD CLAUSES”)

*Sets forth the HTFC standard clauses applicable to the contract and all subcontracts under the contract pursuant to the Subrecipient Agreement.*

PART 6 REQUIRED DIVERSITY FORMS AND CONSTRUCTION REQUIREMENTS

- 6A – HUD Diversity Forms
- 6B – HTFC Diversity Forms
- 6C – Construction Requirements and Procedures for Contracts with HTFC

*Includes standard forms required pursuant to the HUD General Provisions, HTFC M/WBE Requirements and HTFC Standard Clauses. Such forms shall be completed and submitted by Contractor as required by their instructions and the terms of these Supplementary Conditions.*

## **PART 1**

# **ORDER OF PRECEDENCE OF DOCUMENTS**

## **PART 1**

### **ORDER OF PRECEDENCE OF DOCUMENTS**

In the event of a conflict between the terms of these Supplementary Conditions and the terms of the remainder of the contract (including any other attachments thereto and amendments thereof), the terms of these Supplementary Conditions shall control.

In the event of a conflict among the requirements found in these Supplementary Conditions, which conflict would make it impossible to comply with all of the requirements set forth herein, the provisions shall be applied with the following priority:

- (1) The Instructions for Subrecipient; then
- (2) The HUD General Provisions (Part 3); then
- (3) The HTFC M/WBE Requirements (Part 4); then
- (4) The HTFC Standard Clauses (Part 5); then
- (5) The Required Contract Terms (Part 2);

and the remaining requirements shall be interpreted in a manner so as to allow for the terms contained therein to remain valid and consistent with such superseding provisions. If any provision of these Supplementary Conditions relates to a matter embraced by another provision(s) of these Supplementary Conditions, but is not in conflict therewith, all such provisions shall apply. Any question as to which requirements control in a particular instance which cannot be resolved by Contractor and Subrecipient shall be submitted in writing (indicating the issue and the applicable provisions) by Subrecipient to GOSR, which shall decide the applicable question.

**PART 2**

**COMMUNITY DEVELOPMENT BLOCK GRANT  
DISASTER RECOVERY SUBRECIPIENT AGREEMENT**

**REQUIRED TERMS FOR CONTRACTS**

## PART 2

### COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY SUBRECIPIENT AGREEMENT

#### REQUIRED TERMS FOR CONTRACTS

##### A. Insurance & Bonding

Contractor shall carry, and shall cause its subcontractors and sub-subcontractors to carry, the insurance coverage set forth in Attachment A - Insurance Requirements attached heretoto the Introductory Statement to these Supplementary Conditions.

##### B. Civil Rights

###### 1. Compliance

Contractor agrees to comply with the New York State Human Rights Law and with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107, and 12086.

###### 2. Nondiscrimination

Contractor agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCD Act are still applicable.

###### 3. Land Covenants

The Subrecipient Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under the Subrecipient Agreement, Contractor shall cause or shall require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that Grantee and the United States are beneficiaries of, and entitled to enforce, such covenants. To the extent that any such sale, lease or other transfer of land shall occur, Contractor, in undertaking its obligation to carry out the Program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

**4. Section 504**

Contractor agrees to comply with all Federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against individuals with disabilities or handicaps in any federally assisted program. Subrecipient shall provide Contractor with certain guidelines for compliance with that portion of the regulations in force during the term of the contract.

**C. Affirmative Action**

**1. Approved Plan**

Contractor agrees that it shall be committed to carry out, pursuant to Subrecipient's specifications, an Affirmative Action Program in keeping with the principles as provided in Executive Order 11246 of September 24, 1965. Subrecipient shall provide certain Affirmative Action guidelines to Contractor to assist in the formulation of such program. Contractor shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

**2. Minority- and Women-Owned Businesses (M/WBE)**

a. Federal Requirements

Contractor shall comply with the small and minority firms, women's business enterprise, and labor surplus area requirements as set forth at 24 CFR 85.36 or 84.44, as applicable.

Contractor will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of the contract. As used in these Required Contract Terms, the terms "small business" means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed, or Spanish-heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

b. HTFC Requirements

Pursuant to New York State Executive Law Article 15-A ("Article 15-A"), HTFC recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and/or women-owned business enterprises ("M/WBEs") in the performance of certain HTFC-funded subrecipient agreements, and all HTFC-funded contracts and subcontracts. HTFC values affording M/WBEs the opportunity to participate in the performance of these subrecipient agreements, contracts and subcontracts to be awarded under this project. Accordingly, Contractor certifies that it has made and will continue to make good-faith efforts to promote and assist the participation of certified M/WBEs through the use of non-governmental sub-

subrecipients, contractors and their subcontractors at all tiers on this project, in an amount equal to ten percent (10%) minority-owned business enterprises (“MBE”) and ten percent (10%) women-owned business enterprises (“WBE”) of the total dollar value of this project. These participation goals are applicable to the contract as set forth in Part 4 of these Supplementary Conditions and will be monitored by HTFC.

Contractor and its subcontractors at all tiers shall comply with the aforementioned M/WBE requirements as set forth in the Participation by Minority Group Members and Women Requirements and Procedures for Contracts with Housing Trust Fund Corporation, attached hereto as Part 4 of these Supplementary Conditions. In accordance with those requirements, Contractor shall submit and shall require all covered subcontractors at all tiers to submit the required M/WBE documentation, including utilization plans and quarterly reports, to Subrecipient.

Contractor shall provide quarterly reporting of M/WBE data in a form acceptable to Subrecipient, which may require Contractor to consolidate all reports received from subcontractors and lower-tiered subcontractors into a single report or several reports as reasonably requested by Subrecipient with copies of subcontractor and lower-tiered subcontractor M/WBE documentation as supporting documentation. Notwithstanding the provisions of such reports and supporting documentation, Contractor and its subcontractors at all tiers shall maintain copies of all reports and supporting documents as set forth in these Required Terms.

### **3. Equal Employment Opportunity (“EEO”) and Non-Discrimination**

#### **a. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement**

Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that it is an Equal Opportunity or Affirmative Action employer.

#### **b. Non-Discrimination**

Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. Contractor shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### **c. HTFC Requirements**

Pursuant to New York State Executive Law Article 15-A (“Article 15-A”), HTFC recognizes its obligation under the law to promote opportunities for the employment of minority group members and women in the performance of HTFC-funded contracts.

Contractors and its subcontractors at all tiers shall comply with the equal employment opportunity (“EEO”) requirements found in the Participation by Minority Group Members and Women Requirements and Procedures for Contracts with Housing Trust

Fund Corporation, attached hereto as Part 4 of these Supplementary Conditions. In accordance with those requirements, Contractor shall submit and shall require all covered subcontractors at all tiers to submit the required documentation, including an EEO policy statement, staffing plan, and quarterly reports to Subrecipient. Contractor shall provide quarterly reporting of EEO data in a form acceptable to Subrecipient, which may require Contractor to consolidate all reports received from subcontractors and lower-tiered subcontractors into a single report or several reports as reasonably requested by Subrecipient, with copies of subcontractor and lower-tiered subcontractor EEO documentation as supporting documentation. Notwithstanding the provision of such reports and supporting documentation, Contractor and its subcontractors at all tiers shall maintain copies of all reports and supporting documents as set forth in these Required Terms.

#### **4. Retention**

Contractor shall retain all records pertinent to these Required Terms for a period of five (5) years. The retention period begins on the date of the submission of Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Subrecipient Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then all such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

#### **5. Access to Records**

Contractor shall furnish and cause each of its subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by Subrecipient, Grantee, HUD or its agent, the Comptroller General of the United States, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein.

### **D. Employment Restrictions**

#### **1. Labor Standards**

Contractor agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.), and all other applicable Federal, state, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of the contract. Contractor agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to Subrecipient and Grantee for review upon request. If Contractor is engaged under a contract in excess of \$2,000.00 for construction, renovation, or repair work financed in whole or in part with assistance provided under the Subrecipient Agreement, Contractor agrees, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, to comply and to cause all

subcontractors engaged under such contracts to comply with Federal requirements adopted by Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve Contractor of its obligation, if any, to require payment of the higher wage. Contractor shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

**2. "Section 3" Clause**

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided under the Subrecipient Agreement and binding upon Grantee, Subrecipient, Contractor, and any of Contractor's subcontractors and lower-tiered subcontractors. Failure to fulfill these requirements shall subject Grantee, Subrecipient, Contractor, and any of Contractor's subcontractors and lower-tiered subcontractors, as well as their successors and assigns, to those sanctions specified by the agreement through which Federal assistance is provided. Contractor certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

Contractor further agrees to comply with these "Section 3" requirements and to include the following language in all subsequent contracts and subcontracts executed under the contract:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

Contractor further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low-

and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

Contractor certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

Contractor agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Contracts

Contractor will take appropriate action, pursuant to any such agreement, upon a finding that a subcontractor or lower-tiered subcontractor is in violation of regulations issued by HUD. Contractor will not subcontract with any entity where it has notice or knowledge that the entity has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

d. Reporting

Irrespective of any applicable Federal reporting requirements, Contractor shall submit quarterly reports along with any supporting documentation, in a form acceptable to Subrecipient, of its Section 3 compliance efforts to Subrecipient. Contractor may be required to consolidate all reports received from subcontractors and lower-tiered subcontractors into a single report or several reports as reasonably requested by Subrecipient. Notwithstanding the provision of such reports and supporting documentation, Contractor shall maintain copies of all reports and supporting documents as set forth in these Required Terms.

## **PART 3**

# **HUD GENERAL PROVISIONS**

## PART 3

### HUD GENERAL PROVISIONS

The following terms and conditions apply to any contract for which any portion of the funding is derived from a grant made by the United States Department of Housing and Urban Development ("HUD"). In addition, Contractor shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at <http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf>.

#### 1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

#### 2. STATUTORY AND REGULATORY COMPLIANCE

Contractor shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2), including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.

#### 3. BREACH OF CONTRACT TERMS

The State reserves its right to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of this contract, in instances where the Contractor or any of its subcontractors violate or breach any contract term. If the Contractor or any of its subcontractors violate or breach any contract term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

#### 4. REPORTING REQUIREMENTS

The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the State. The Contractor shall cooperate with all State efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 24 C.F.R. §§ 85.40-41 (or 84.50-52, if applicable) and 570.507.

#### 5. ACCESS TO RECORDS

The State, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Contractor which are related to this contract, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions.

6. MAINTENANCE/RETENTION OF RECORDS

All records connected with this contract will be maintained in a central location and will be maintained for a period of at least four (4) years following the date of final payment and close-out of all pending matters related to this contract.

7. SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

The Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

8. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD

9. ENERGY EFFICIENCY

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the New York State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

10. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

11. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

12. SECTION 504 OF THE REHABILITATION ACT OF 1973

The Contractor shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and any applicable regulations.

The Contractor agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from HUD.

13. AGE DISCRIMINATION ACT OF 1975

The Contractor shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

14. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Contractor represents and warrants that it and its subcontractors are not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs subject to 2 C.F.R. part 2424.

15. CONFLICTS OF INTEREST

The Contractor shall notify the State as soon as possible if this contract or any aspect related to the anticipated work under this contract raises an actual or potential conflict of interest (as defined at 2 C.F.R. Part 215 and 24 C.F.R. § 85.36 (or 84.42, if applicable)). The Contractor shall explain the actual or potential conflict in writing in sufficient detail so that the State is able to assess such actual or potential conflict. The Contractor shall provide the State any additional information necessary for the State to fully assess and address such actual or potential conflict of interest. The Contractor shall accept any reasonable conflict mitigation strategy employed by the

State, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict.

16. SUBCONTRACTING

When subcontracting, the Contractor shall solicit for and contract with such subcontractors in a manner providing for fair competition. Some of the situations considered to be restrictive of competition include but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a *brand name* product instead of allowing an *equal* product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

The Contractor represents to the State that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract.

The Contractor will include these HUD General Provisions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

17. ASSIGNABILITY

The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the State.

18. INDEMNIFICATION

The Contractor shall indemnify, defend, and hold harmless the State and its agents and employees from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the Contractor in the performance of the services called for in this contract.

19. COPELAND "ANTI-KICKBACK" ACT  
(Applicable to all construction or repair contracts)

Salaries of personnel performing work under this contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by

the Secretary of Labor pursuant to the Copeland "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. § 874; and Title 40 U.S.C. § 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

20. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(Applicable to construction contracts exceeding \$2,000 and contracts exceeding \$2,500 that involve the employment of mechanics or laborers)

The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.

21. DAVIS-BACON ACT

(Applicable to construction contracts exceeding \$2,000 when required by Federal program legislation)

The Contractor shall comply with the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

22. TERMINATION FOR CAUSE (Applicable to contracts exceeding \$10,000)

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the State, become the State's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the contract by the Contractor, and the State may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the State from the Contractor is determined.

23. TERMINATION FOR CONVENIENCE (Applicable to contracts exceeding \$10,000)

The State may terminate this contract at any time by giving at least ten (10) days' notice in writing to the Contractor. If the contract is terminated by the State as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

24. SECTION 503 OF THE REHABILITATION ACT OF 1973  
(Applicable to contracts exceeding \$10,000)

The Contractor shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

Equal Opportunity for Workers With Disabilities

1. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:
  - i. Recruitment, advertising, and job application procedures;
  - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  - iii. Rates of pay or any other form of compensation and changes in compensation;
  - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - v. Leaves of absence, sick leave, or any other leave;
  - vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor;
  - vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

- viii. Activities sponsored by the contractor including social or recreational programs; and
  - ix. Any other term, condition, or privilege of employment.
2. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
  3. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
  4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Contractor must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).
  5. The Contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.
  6. The Contractor will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.
25. EXECUTIVE ORDER 11246  
(Applicable to construction contracts and subcontracts exceeding \$10,000)

The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- D. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- G. In the event of the Contractor's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- H. Contractor shall incorporate the provisions of A through G above in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor so that such provisions shall be binding on such subcontractor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests

of the United States.

26. CERTIFICATION OF NONSEGREGATED FACILITIES  
(Applicable to construction contracts exceeding \$10,000)

The Contractor certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

27. CERTIFICATION OF COMPLIANCE WITH CLEAN AIR AND WATER ACTS  
(Applicable to contracts exceeding \$100,000)

The Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. § 1857 *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*, and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 15 and 32, as amended, Section 508 of the Clean Water Act (33 U.S.C. § 1368) and Executive Order 11738.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

- A. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. 32 or on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 C.F.R. Part 15, as amended.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of

any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.

- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (A) through (D) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

28. LOBBYING (Applicable to contracts exceeding \$100,000)

The Contractor certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

29. BONDING REQUIREMENTS

(Applicable to construction and facility improvement contracts exceeding \$100,000)

The Contractor shall comply with New York state bonding requirements, unless they have not been approved by HUD, in which case the Contractor shall comply with the following minimum bonding requirements:

- (1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid

guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the Contractor for 100 percent of the contract price.* A “performance bond” is one executed in connection with a contract to secure fulfillment of all the Contractor’s obligations under such contract.

(3) *A payment bond on the part of the Contractor for 100 percent of the contract price.* A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

30. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968  
(As required by applicable thresholds)

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD’s regulations in 24 C.F.R. part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the Contractor’s commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The

Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.

- E. The Contractor will certify that any vacant employment positions, including training positions, that are filled: (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. part 135.
- F. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

**PART 4**

**PARTICIPATION BY MINORITY GROUP MEMBERS  
AND WOMEN**

**REQUIREMENTS AND PROCEDURES  
FOR CONTRACTS WITH  
HOUSING TRUST FUND CORPORATION**

**PART 4**

**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN**

**REQUIREMENTS AND PROCEDURES  
FOR CONTRACTS WITH  
HOUSING TRUST FUND CORPORATION**

**I. General Provisions**

- A. The Corporation is required to implement the provisions of New York State ("State") Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value: (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Housing Trust Fund Corporation ("Corporation"), to fully comply and cooperate with the Corporation in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of Contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to section VII of this Part or enforcement proceedings as allowed by the Contract.

**II. Contract Goals**

- A. For purposes of this procurement, the Corporation hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises ("MWBE") participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on this Contract and achieving the Contract Goals established in section III-A, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>.

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on this Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract. In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and

intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the Corporation for liquidated or other appropriate damages, as set forth herein.

### **III. Equal Employment Opportunity (EEO)**

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
  1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  2. The Contractor shall submit an EEO policy statement (Form PROC-8) to the Corporation within seventy two (72) hours after the date of the notice by Corporation to award the Contract to the Contractor.
  3. If Contractor or Subcontractor does not have an existing EEO policy statement, the Corporation may provide the Contractor or Subcontractor a model statement (see Form PROC-4 – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
  4. The Contractor's EEO policy statement shall include the following language:
    - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
    - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
    - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

- d. The Contractor will include the provisions of sections (a) through (c) of this subsection and paragraph "E" of this section, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Contract.

C. Form PROC-1- Staffing Plan

To ensure compliance with this section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of this Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the Contract.

D. Form PROC-5 - Workforce Employment Utilization Report ("Workforce Report")

1. Once a Contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Corporation of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

Reports should be submitted by email to: [MWBE\\_EEOCreports@stormrecovery.ny.gov](mailto:MWBE_EEOCreports@stormrecovery.ny.gov).

2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
  3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the subject Contract. When the workforce to be utilized on the Contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.
- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**IV. MWBE Utilization Plan**

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (Form PROC-2) either prior to, or at the time of, the execution of this Contract.

- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on this Contract pursuant to the prescribed MWBE goals set forth in section III-A of this Part.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of this Contract. Upon the occurrence of such a material breach, the Corporation shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

#### **V. Waivers**

- A. For Waiver Requests Contractor should use Form PROC-3 – Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Corporation shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the Corporation, upon review of the Utilization Plan and updated Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Corporation may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### **VI. Quarterly MWBE Contractor Compliance Report**

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form PROC-6) to the Corporation by the 10th day following each end of quarter (i.e., March 31st, June 30th, September 30th, and December 31st) over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract. Reports should be submitted by email to: [MWBE\\_EEOCreports@stormrecovery.ny.gov](mailto:MWBE_EEOCreports@stormrecovery.ny.gov).

#### **VII. Liquidated Damages - MWBE Participation**

- A. Where the Corporation determines that Contractor is not in compliance with the requirements of this Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Corporation liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Agency, Contractor shall pay such liquidated damages to the Corporation within sixty (60) days after they are assessed by the Corporation unless prior to the expiration of such sixtieth (60th) day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to subdivision 8 of

section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Corporation.

**PART 5**

**STANDARD CLAUSES FOR CONTRACTS  
WITH THE HOUSING TRUST FUND CORPORATION**

**PART 5**

**STANDARD CLAUSES FOR CONTRACTS  
WITH THE HOUSING TRUST FUND CORPORATION**

NEW YORK STATE HOUSING FINANCE AGENCY, STATE OF NEW YORK MORTGAGE  
AGENCY

NEW YORK STATE AFFORDABLE HOUSING CORPORATION, STATE OF NEW YORK  
MUNICIPAL BOND BANK AGENCY, AND TOBACCO SETTLEMENT FINANCING  
CORPORATION

641 LEXINGTON AVENUE, NEW YORK, NEW YORK 10022, (212) 688-4000

HOUSING TRUST FUND CORPORATION  
38-40 STATE STREET, ALBANY NEW YORK 12207

May, 2014

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**STANDARD CLAUSES FOR AGENCY CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "Contract") agree to be bound by the following clauses which are hereby made a part of the Contract (the word "Contractor" herein refers to any party other than the State of New York ("State")), whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. ACCOUNTING RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance of work done for the Agency or Agencies under this Contract (hereinafter, collectively, "the Records") consistent with generally accepted bookkeeping practices. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The Agency or Agencies involved in this Contract and any person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The Agency or Agencies shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform the Agencies' Senior Vice President and Counsel, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Agency's or Agencies' right to discovery in any pending or future litigation.

**2. CONFLICTS OF INTEREST.** The Contractor shall not accept any engagement in conflict with the Agency's or Agencies' interest in the subject matter of this Contract.

The Servicer shall not offer to any employee, member or director of the Agency or Agencies' any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or

promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

**3. SUBCONSULTANTS.** The Contractor shall not employ, contract with, or use the services of any consultant for the work of this Contract (except such third parties which may be used by the Contractor in the normal course of business, such as couriers, imaging services, etc.) without obtaining the prior written approval of the Agency or Agencies.

**4. NON-ASSIGNABILITY.** This Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent in writing of the Agency or Agencies and any attempts to assign the Contract without the Agency or Agencies' written consent are null and void. However, this Contract shall be binding upon and inure to the benefit of the Agency or Agencies and its successors and assigns.

**5. INDEMNITY.** The Contractor shall indemnify and hold the Agency or Agencies and their employees, officers, Members and Directors (collectively, the "Indemnities") harmless from and against all claims, demands, liability, loss, cost, damage or expense, including attorney's fees, which may be incurred by the Indemnities because of negligence or malfeasance on the part of the Contractor arising out of this Contract.

**6. NON-DISCRIMINATION.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. If this a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason or race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Contractor is subject to fines of \$50 per person per day for any violation of Section 239 as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

If directed to do so by the State Commissioner of Human Rights ("Commissioner"), the Contractor will send to each labor union to which the Contractor is bound a notice provided by the Commissioner advising of this provision. The Servicer will keep posted in conspicuous places notices of the Commissioner regarding laws against discrimination. The Contractor will state in all advertisements for employees that all qualified applicants will be afforded equal opportunities without discrimination because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status.

If the Contractor has fifteen or more employees, it is an unlawful employment practice for the Contractor to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, or to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an individual's status as an employee, because of such individual's race, color, religion, sex, or national origin, or because an individual opposed any practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, or because he or she made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that Title; and that it shall be an unlawful employment practice to print or publish or cause to be printed or published any notice or advertisement relating to employment indicating any preference, limitation, specification, or discrimination on the basis of race, color, religion, sex, or national origin.

If the Contractor has fifteen or more employees, the Contractor: (1) will make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed; (2) will preserve such records for such periods as the Equal Employment Opportunity Commission ("EEOC") shall prescribe by regulation; (3) will make such reports therefrom as the EEOC shall prescribe by regulation or order; (4) must post and keep posted in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted a notice prepared or approved by the EEOC setting forth excerpts from, or summaries of, pertinent provisions of Title VII of the Civil Rights Act of 1964, as amended, and information pertinent to the filing of a complaint.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will comply with all non-discriminatory employment practices, will furnish all information deemed necessary by the Commissioner, and will permit the Commissioner access to its records to ascertain compliance. The Contractor will bind all subcontractors hired to perform services in connection with this Contract to the requirements of this section, take such action for enforcement as the Commissioner may direct, and notify the Commissioner if such action results in litigation. This Contract may be terminated by the Agency or Agencies upon the Commissioner's finding of non-compliance with this section, and the Contractor may be declared ineligible for future contracts with an agency of the State or a public authority until the Contractor satisfies the Commissioner of compliance.

**7. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby the Agency or Agencies, is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Agency or Agencies, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) the Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Agency or Agencies' contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the Agency or Agencies, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of this Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of 'a', 'b', and 'c' above, in every subcontract. Section 312 does not apply to: (i) work, goods or services unrelated to this Contract; or (ii) employment outside New York State. The Agency or Agencies shall consider compliance by a Contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The Agency or Agencies shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the Agency or Agencies shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

(d) If the procurement of the goods or services provided herein is subject to minority and women-owned participation requirements pursuant to Article 15-A of the Executive Law, the Contractor shall be liable to the Agency or Agencies for liquidated or other appropriate damages and shall provide for other appropriate remedies on account of such breach in the event it is found that the Contractor willfully and intentionally failed to comply with the minority and women-owned participation requirements set-forth in Article 15-A of the Executive Law.

**8. PROPRIETARY INFORMATION.** All memoranda, analyses, spreadsheets and other pertinent documents or writings, including reports and financial statements developed or prepared by, or for, the Contractor in connection with the performance of this Contract are "Proprietary Information" and shall be, and remain, the property of the Agency or Agencies. All original documents constituting Proprietary Information shall be delivered to the Agency or

Agencies by the Contractor, or any subcontractor, or any other person possessing them, upon the termination of this Contract or upon the earlier request of the Agency or Agencies, except that the Contractor may retain copies for its files. Proprietary Information may not be utilized, disclosed or otherwise made available to other persons by the Contractor without the prior written approval of the Agencies' Senior Vice President and Counsel. The provisions of this section shall be in addition to, and not in derogation of, any duty imposed upon the Contractor by any law, regulation or rule governing professional conduct respecting confidentiality.

**9. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices submitted for payment for the sale of goods or services or the lease of real or personal property to the Agency or Agencies must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the Agency or Agencies is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by Agency or Agencies to purchase the goods or services or lease the real or personal property covered by this Contract or lease. The information is maintained by Disbursement Manager at the Agency or Agencies, 641 Lexington Avenue, New York, New York 10022, under the name "Vendor Federal Social Security and Federal Employee Identification Numbers."

**10. CONTRACTUAL RELATIONSHIP.** It is expressly understood that the relationship between the Agency or Agencies and the Contractor is an independent contractual relationship and neither the Contractor, its employees, nor its subcontractors shall be considered employees of the Agency or Agencies for any purpose. Please refer to the following link on the Agency's web site to view each of the Agency's Prompt Payment Policies at <http://www.nyshcr.org/AboutUs/Procurement/Contractinformation.htm> or call the Agencies' Contract Officer at (212) 688-4000.

**11. ENTIRE AGREEMENT.** This Contract constitutes the entire agreement between the Contractor and the Agency or Agencies with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix I, the terms of this Appendix I shall control.

12. **MODIFICATION.** Waiver, discharge, amendment, supplement, extension or other modification of this Contract shall be subject to prior approval by the Agency or Agencies and may be effected only by an instrument in writing signed by the parties to this Contract.

13. **SECTION HEADINGS.** The caption of sections in this Contract are inserted solely for convenience of reference and are not intended to define, limit, or describe the scope of this Contract or any provision hereof or to otherwise affect this Contract in any way. The section headings shall not be considered in any way in construing this Contract.

14. **COUNTERPARTS.** This Contract may be executed in any number of counterparts. Each such counterpart shall be deemed to be a duplicate original. All such counterparts shall constitute but one and the same instrument.

15. **GOVERNING LAW.** This Contract has been executed and delivered in, and shall be construed and enforced in accordance with the laws of, the State of New York. In the event of conflict between New York State law and federal laws and regulations, the latter shall prevail.

16. **NOTICES.** All notices and other communications given hereunder shall not be effective for any purpose whatsoever unless in writing and delivered by hand or mailed by United States first class registered or certified mail, return receipt requested. Notice shall be deemed to have been given, if delivered by hand, when actually received by the party being notified, or, if mailed, when addressed (a) if to the Contractor, to the attention of the Contractor's authorized signatory of this Contract at the address specified for the Contractor on page one of this Contract, or at such other address as to which the Contractor shall have notified the Agency or Agencies, and (b) if to the Agency or Agencies, to the attention of the Senior Vice President and Counsel, at the address for the Agency or Agencies on page one this Contract, or at such other address of which the Agency or Agencies shall have notified the Contractor.

17. **SEVERABILITY.** All rights, powers and remedies provided herein may be exercised only to the extent that they do not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Contract invalid, unenforceable or not entitled to be recorded, registered, or filed under applicable law. If any provision or term of this Contract or any portion of a provision shall be held to be invalid, illegal or unenforceable, only such provision or part thereof shall be affected by such holding and this Contract shall be construed as if such invalid, illegal or unenforceable provision or part thereof had not been contained herein.

18. **WORKERS' COMPENSATION.** This Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

19. **NO ARBITRATION.** Disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**20. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules (“CPLR”), the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service of process hereunder shall be complete upon the Contractor’s actual receipt of process or upon the Agency’s or Agencies’ receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the Agency or Agencies, in writing, of each and every change of address to which service of process can be made. Service of process by the Agency or Agencies to the last known address shall be sufficient. The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**21. NON-COLLUSIVE BIDDING CERTIFICATION.** If this Contract was awarded based upon the submission of a bid or proposal, the Contractor affirms, under penalty of perjury, that the prices in its bid or proposal were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, or as to any matter relating to such prices with any other Contractor or with any competitor. The Contractor further affirms that, at the time the Contractor submitted its bid or proposal, an authorized and responsible person executed and delivered a non-collusive bidding certification to the Agency or Agencies on the Contractor’s behalf.

**22. LOBBYING REFORM LAW DISCLOSURE.** If the procurement of the goods or services provided herein were applicable to Lobbying Reform Law Disclosure as pursuant to State Finance Law §§139-j and 139-k, the Agency or Agencies reserves the right to terminate this Contract in the event it is found that the certification filed by the Offerer/Bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Agency or Agencies may exercise their termination right by providing written notification to the Contractor.

**23. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**24. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245

Telephone: 518-292-5100  
Email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

Fax: 518-292-5884

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, New York 10017  
Telephone: 212-803-2424  
Email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or Contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this Contract and agrees to cooperate with the State in these efforts.

**25. GENERAL RESPONSIBILITY LANGUAGE.** The Contractor shall at all times during Contract term remain responsible. The Contractor agrees, if requested by the Agencies, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

For purposes of this Agreement, Contractor responsibility generally means that the Contractor has the integrity to justify the award of public dollars and the capacity to perform the requirements of this Contract fully. In connection herewith, to the extent that the Agencies may make certain determinations with respect to Contractor responsibility, wherein the Agencies determine whether it has reasonable assurances that a Contractor is responsible, is an important part of the procurement process, promoting fairness in contracting, mitigating contract issues, and protecting the Contractor and the Agencies against failed contracts. In making such a responsibility determination, the Agencies shall evaluate the Contractor's responsibility with

respect to four factors: (a) financial and organizational capacity; (ii) legal authority to do business in New York State; (c) integrity; and (iv) previous performance.

**26. SUSPENSION OF WORK (for Non-Responsibility).** The Agencies reserve the right to suspend any or all activities under this Contract, at any time, when the Agency discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Agencies issue a written notice authorizing a resumption of performance under the Contract.

**27. Termination (for Non-Responsibility).** Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Agency staff, the Contract may be terminated by the Agencies at the Contractor's expense where the Contractor is determined by the Agencies to be non-responsible. In such event, the Agencies may complete the contractual requirements in any manner they deem advisable and pursue available legal or equitable remedies for breach.

**28. Iran Divestment Act.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the Agency.

During the term of the Contract, should the Agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The Agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

## PART 6

### REQUIRED DIVERSITY FORMS AND CONSTRUCTION REQUIREMENTS

The following forms shall be completed and submitted by Contractor as required by the instructions set forth on the forms. Of note:

- (1) As part of the bidding process, Subrecipient shall collect the following forms from all bidders:
  - a. Introductory Statement, with bidder's name and address filled in where Contractor's name and address is required, executed by bidder.
  - b. Form PROC-1 (EEO Staffing Plan);
  - c. Form PROC-2 (M/WBE Utilization Plan); and
  - d. Form PROC-3 (Request for Waiver Form) – if a waiver is sought.

Subrecipient shall appropriately consider in its award decision the information provided in the above referenced forms as indicia of the bidders' ability to comply with related terms of the prospective contract.

- (2) Upon execution of a contract, Contractor shall execute the following forms:
  - a. Form PROC-4 (M/WBE and EEO Policy Statement); and
  - b. Form PROC-8 (EEOC Statement).

- (3) Following execution of a contract, Contractor shall complete and submit the following forms. Of note:

- a. The following form is required to be completed weekly and retained:
  - i. Form WH-374 (Federal Payroll Form) – As of September 11, 2014, this form is available at <http://www.dol.gov/whd/forms/wh347.pdf>.
- b. The following forms have quarterly submission requirements, as set forth in their instructions (except as indicated below):
  - i. Form PROC-5 (Workforce Employment Utilization);
  - ii. Form PROC-6 (MWBE Quarterly Report);
  - iii. Form ADM-123 (Cumulative Payment Statement);
  - iv. Form ADM-146 (Affirmation of Income Payments to MBE/WBE); and
  - v. Form HUD 60002 (Section 3 Summary Report) – which shall be completed

quarterly notwithstanding the annual reporting requirement set forth in its instructions.

- c. The following form has monthly submission requirements, as set forth in its instructions:
  - i. Form ADM-136 (Monthly Employment Utilization Form).
- d. The following form has annual submission requirements, as set forth in its instructions:
  - i. Form HUD 2516 (Contract and Subcontract Activity).
- e. The following form has semi-annual submission requirements and should be submitted to Monitoring and Compliance, Governor's Office of Storm Recovery, 25 Beaver Street, New York, NY 10004:
  - i. Form HUD 4710 (Semi-Annual labor Standards Enforcement Report) –  
Fillable form available at  
<http://www.hud.gov/offices/adm/hudclips/forms/hud4.cfm>.
- f. There is no Form PROC-7.

## **PART 6A. HUD Diversity Forms**







**Part II: Contracts Awarded**

1. Construction Contracts:

A. Total dollar amount of all contracts awarded on the project	\$	
B. Total dollar amount of contracts awarded to Section 3 businesses	\$	
C. Percentage of the total dollar amount that was awarded to Section 3 businesses		%
D. Total number of Section 3 businesses receiving contracts		

2. Non-Construction Contracts:

A. Total dollar amount of all non-construction contracts awarded on the project/activity	\$	
B. Total dollar amount of non-construction contracts awarded to Section 3 businesses	\$	
C. Percentage of the total dollar amount that was awarded to Section 3 businesses		%
D. Total number of Section 3 businesses receiving non-construction contracts		

**Part III: Summary**

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

- Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contact with community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county in which the Section 3 covered program or project is located, or similar methods.
- Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
- Participated in a HUD program or other program, which promotes the award of contracts to business concerns that meet the definition of Section 3 business concerns.
- Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
- Other; describe below

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u., mandates that the Department ensure that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as a self-monitoring tool. The data is entered into a data base and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative personal identifying information is not included.

Form HUD-60002, Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons.

**Instructions:** This form is to be used to report annual accomplishments regarding employment and other economic opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968. The Section 3 regulations apply to any **public and Indian Housing programs** that receive: (1) development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937 and to **recipients of housing and community development assistance in excess of \$200,000** expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; and to **contracts and subcontracts in excess of \$100,000** awarded in connection with the Section-3-covered activity.

Form HUD-60002 has three parts which are to be completed for all programs covered by Section 3. Part I relates to **employment and training**. The recipient has the option to determine numerical employment/training goals either on the basis of the number of hours worked by new hires (columns B, D, E and F) or the number of new hires utilized on the Section 3 covered project (columns B, C and F). Part II of the form relates to **contracting**, and Part III summarizes recipients' **efforts** to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.\* A recipient of Section 3 covered assistance shall submit two copies of this report to the local HUD Field Office. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted at the same time the program performance report is submitted. Where an annual performance report is not required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. **Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.**

HUD Field Office: Enter the Field Office name forwarding the Section 3 report.

1. Recipient: Enter the name and address of the recipient submitting this report.
2. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.
3. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.
- 4 & 5. Contact Person/Phone: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.
6. Reporting Period: Indicate the time period (months and year) this report covers.
7. Date Report Submitted: Enter the appropriate date.

Submit two (2) copies of this report to the HUD Field Office of Fair Housing and Equal Opportunity, Program Operations and Compliance Center Director, at the same time the performance report is submitted to the program office. For those programs where such a report is not required, the Section 3 report is submitted by January 10. Include only contracts executed during the reporting period specified in item 8. PHAs/HAs are to report all contracts/subcontracts.

\* The terms "low-income persons" and "very low-income persons" have the same meanings given the terms in section 3(b)(2) of the United States Housing Act of 1937. **Low-income persons** mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for

8. Program Code: Enter the appropriate program code as listed at the bottom of the page.

9. Program Name: Enter the name of the HUD Program corresponding with the "Program Code" in number 8.

**Part I: Employment and Training Opportunities**

**Column A:** Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e., supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers.

**Column B:** Enter the number of new hires for each category of workers identified in **Column A** in connection with this award. New Hire refers to a person who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

**Column C:** Enter the number of Section 3 new hires for each category of workers identified in **Column A** in connection with this award. Section 3 new hire refers to a Section 3 resident who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

**Column D:** Enter the percentage of all the staff hours of new hires (Section 3 residents) in connection with this award.

**Column E:** Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions.

**Column F:** Enter the number of Section 3 residents that were employed and trained in connection with this award.

**Part II: Contract Opportunities**

**Block 1: Construction Contracts**

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

**Block 2: Non-Construction Contracts**

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

**Part III: Summary of Efforts - Self-explanatory**

smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. **Very low-income persons** mean low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

Agency Name:	Agency Type: <small>(e.g., Local Government, Non-Profit)</small>	State:	LR2000 Agency ID #. (HUD Use Only)
<b>Period Covered: Check One and Enter Year(s)</b>			
<input type="checkbox"/> <b>Period 1:</b> October 1, _____ to March 31, _____		<input type="checkbox"/> <b>Period 2:</b> April 1, _____ to September 30, _____	
Agency Contact Person:		Agency Contact Phone/E-mail:	

**PART I - CONTRACTING ACTIVITY\***  
*Pertains ONLY to projects awarded during the reporting period.*

1. Number of prime contracts subject to the Davis-Bacon and Related Acts (DBRA) and/or the Contract Work Hours and Safety Standards Act (CWHSSA) awarded this period  
Note: Do not include contracts included in previous semi-annual reports
2. Total dollar amount of prime contracts reported in item 1 above \$
3. List for each contract awarded this period:

Project Name/Number	Contract Amount	Wage Decision Number	Wage Decision Lock-In Date
<b>EXAMPLE:</b> "Boy's Club Renovation # CD54005-65"	"\$0,000,000.00"	"FL040001/Mod 3, 6/25/04, Building"	"07/02/04 bid open date" ◀ Lock

\*Use additional pages if necessary

**WHAT IS THE LOCK-IN DATE?** For contracts entered into pursuant to competitive bidding procedures, the bid opening date "locks-in" the wage decision provided that the contract is awarded within 90 days. If the contract is awarded more than 90 days after bid opening, the contract award date "locks-in" the wage decision. For contracts, purchase orders or other agreements for which there is no bid opening or award date, use the construction start date as the lock-in date. However, for projects receiving assistance under Section 8 of the U.S. Housing Act of 1937 or contracts involving a project wage determination, the lock-in rules may vary from above. See Department of Labor Regulations, 29 CFR, Part 1, Section 1.6 and/or HUD Handbook 1344.1, or consult the HUD Labor Relations staff.

**WHAT IT ISN'T:** Do not use the wage decision publication date, unless that happens to correspond to one of the trigger events described above. If you are not sure about any of this, please feel free to contact the Labor Relations staff in your state or region.

Agency Name:	Agency Type: <small>(See HUD-2007-001)</small>	State:	LR2000 Agency ID #: (HUD Use Only)
<b>Period Covered: Check One and Enter Year(s)</b>			
<input type="checkbox"/> <b>Period 1:</b> October 1, ____ to March 31, ____		<input type="checkbox"/> <b>Period 2:</b> April 1, ____ to September 30, ____	
Agency Contact Person:		Agency Contact Phone/E-mail:	

**PART II - ENFORCEMENT ACTIVITY\***

*Pertains to all projects, not just contract(s) awarded during the reporting period.*

4. Number of employers against whom complaints were received (list employers and projects involved below):

<b>Employer</b>	<b>Project(s)</b>
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5. (a) Number of cases (employers) referred to HUD Labor Relations for investigation or §5.11 hearing (list referrals below):

(b) Number of cases (employers) referred to the Department of Labor (DOL) for investigation or §5.11 hearing (list referrals below):

Employer	Project	HUD or DOL	Invest. Or Hearing
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6. (a) Number of workers for whom wage restitution was collected/disbursed:  
*Report only once; if you previously reported workers for whom restitution was collected, do not report the same workers when funds are disbursed. Include workers to whom restitution was paid directly by the employer.*

(b) Total amount of straight time wage restitution collected/disbursed during this period:  
*Report only once; if you report funds collected, do not report the disbursement. Include restitution amounts paid directly by the employer as reported on correction certified payrolls.*

(c) Total amount of CWHHSA overtime wage restitution collected/disbursed during this period:  
*Report only once; if you report funds collected, do not report the disbursement. Include restitution amounts paid directly by the employer as reported on correction certified payrolls.*

(d) Total amount of liquidated damages collected:

\* Use additional pages if necessary

<b>Semi-Annual Labor Standards Enforcement Report - Local Contracting Agencies (HUD Programs)</b>	<b>U.S. Department of Housing and Urban Development Office of Labor Relations</b>	<b>HUD FORM 47101</b> <small>OMB Approval Number 2551-0019 (Exp. 09-30-2015)</small>
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Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The information is considered non-sensitive and does not require special protection. This information is required to obtain benefits. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

All Federal agencies administering programs subject to Davis-Bacon wage provisions are required by Department of Labor (DOL) regulations (29 CFR Part 5, Section 5.7(b)) to submit a report of all new covered contracts/projects and all enforcement activities each six months. In order for HUD to comply with this requirement, it must collect contract and enforcement information from local agencies that administer HUD-assisted programs subject to Davis-Bacon requirements. HUD requests that local agencies complete and submit a Semi-annual Enforcement Report each six months.

Local agencies and HUD must retain a copy of the Semi-annual Enforcement Report in its files.

*Please follow these instructions while compiling the Semi-Annual Labor Standards Enforcement Report for Local Contracting Agencies (HUD Programs) (form HUD-4710).*

### **Introduction**

Department of Labor (DOL) Regulations 29 CFR §5.7(b) require Federal agencies administering programs subject to Davis-Bacon and Related Act (DBRA) and Contract Work Hours and Safety Standards Act (CWHSSA) labor standards to furnish a Semi-Annual Labor Standards Enforcement Report to the Administrator of the Wage and Hour Division. Some HUD programs are administered by state and local agencies for labor standards compliance. HUD must collect information from such agencies in order to capture enforcement activities for all HUD programs in its reports to DOL.

**Reporting Periods:** **Period 1** October 1 through March 31  
**Period 2** April 1 through September 30

**Report Format:** Each agency report consists of two parts:

- Part I** concerns contracting activity for work awarded during the reporting period;
- Part II** concerns enforcement activity for all contracts, regardless of the award date.

The HUD Labor Relations staff for your area will send a courtesy reminder shortly before the due date about preparing the report and will remind you of the date your report is due. However, you should maintain accurate records throughout the year of relevant contract information so that you can submit the report timely.

### **Definitions and Guidance**

**Part I - Contracting Activity** - This part concerns only contracts that were **awarded** during this period. Do not include contracts that were awarded prior to this period even though the contracts may still be underway. Do include work subject to purchase order or other form of agreement, even if there is no formal contract award.

**Item 1.** Enter the total number of prime contracts subject to DBRA/CWHSSA awarded during this period. Track contracts by award or start of construction - **do not** track by bid opening date. Public Housing Authorities (PHAs), Tribally-designated Housing Entities (TDHEs)/Indian Housing Authorities (IHAs); Include force account work that is subject to DBRA/CWHSSA.

**Item 2.** Enter the total dollar amount of the contracts and/or PHA/TDHE/IHA force account work reported in Item 1.

<b>Semi-Annual Labor Standards Enforcement Report - Local Contracting Agencies (HUD Programs)</b>	<b>U.S. Department of Housing and Urban Development Office of Labor Relations</b>	<b>HUD FORM 4710I</b> <small>OMB Approval Number 2501-0015 (Exp. 06/30/2013)</small>
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**Item 3.** List each project/contract name, brief descriptive information, number or unique identifier, dollar amount, the wage decision and modification number in the contract, bid opening date, contract award date, and construction start date. Identify which milestone date triggered the wage decision "lock-in" (bid opening date, contract award date or start of construction date, as appropriate). If the project was not subject to sealed bids, indicate "NA" for bid opening date and proceed to identify the other dates.

**Part II - Enforcement Activity** - This part concerns *all* enforcement activity no matter when the contract was awarded or construction began.

**Item 4.** Enter the number of **employers** (contractors, subcontractors, lower-tier subcontractors) against whom complaints were received during the report period. List the names of the employers against whom complaints were received and the projects involved.

**Item 5.** Enter the number of employers that were referred to HUD Labor Relations or DOL staff for investigations, for hearings on appeal and/or debarment hearings. List the employer, project, and agency (HUD or DOL) to which the case was referred, and the reason for referral - investigation, appeal hearing (DOL Regulations 29 CFR Part 5, Section §5.11) and/or debarment (DOL Regulations 29 CFR Part 5, Section §5.12) hearing.

**Item 6.** Enter information relative to wage restitution that was **collected and/or disbursed** during the report period. This includes restitution disbursed by the agency: restitution reported on certified payroll correction reports, amounts collected but not disbursed because workers could not be found. Report straight time wage restitution separate from Contract Work Hours and Safety Standards Act (CWHSSA) overtime wage restitution. Also list liquidated damages collected for CWHSSA overtime violations.

## **PART 6B. HTFC Diversity Forms**

# EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN

Submit with Bid or Proposal – Instructions on page 2

**Solicitation/Program Name:** \_\_\_\_\_

**Report includes:**  
 Workforce to be utilized on this contract  
 Contractor/Subcontractor's total work force

**Offeror's Name:** \_\_\_\_\_

**Reporting Entity:**  
 Contractor  
 Subcontractor  
**Subcontractor's name** \_\_\_\_\_

**Offeror's Address:** \_\_\_\_\_

Enter the total number of employees for each classification in each of the EEO-Job Categories identified  
 Work force by

EEO-Job Category	Workforce by Gender		Race/Ethnic Identification						Disabled (M) (F)	Veteran (M) (F)
	Total Male (M)	Total Female (F)	Black (M) (F)	Hispanic (M) (F)	Asian (M) (F)	Native American (M) (F)	White (M) (F)			
Officials/Administrators										
Professionals										
Technicians										
Service Maintenance Workers										
Office/Clerical										
Skilled Craft Workers										
Paraprofessionals										
Protective Service Workers										
<b>Totals</b>										

**PREPARED BY (Signature):** \_\_\_\_\_

**TELEPHONE NO.:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**EMAIL ADDRESS:** \_\_\_\_\_

**NAME AND TITLE OF PREPARER (Print or Type):** \_\_\_\_\_

**SUBMIT COMPLETED WITH BID OR PROPOSAL**

**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's or subcontractor's total work force, the Offeror shall complete this form for the contractor's or subcontractor's total work force.

**Instructions for completing:**

1. Enter the Solicitation number or RFP number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Offerors' total workforce.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and enter under the heading 'Workforce by Gender'
6. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the Designated Contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male (M) or Female (F)

## MWBE UTILIZATION PLAN

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

**Offeror's Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip Code:** \_\_\_\_\_

**Region/Location of Work:** \_\_\_\_\_

**Federal Identification Number:** \_\_\_\_\_

**Solicitation Number:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**M/WBE Goals in the Contract:** MBE    %    WBE    %

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts / Supplies/Services and intended performance dates of each component of the contract.
A.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

**6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (PROC-5).**

**PREPARED and APPROVED BY:** \_\_\_\_\_

**NAME AND TITLE OF PREPARER (Print or Type):** \_\_\_\_\_

**Signature:** \_\_\_\_\_  
 Authorized Signature

**DATE:** \_\_\_\_\_

**TELEPHONE NO:** \_\_\_\_\_

**EMAIL ADDRESS:** \_\_\_\_\_

**UTILIZATION PLAN APPROVED:**  YES  NO    Date: \_\_\_\_\_

**Contract No:** \_\_\_\_\_

**Contract Award Date:** \_\_\_\_\_

**Estimated Date of Completion:** \_\_\_\_\_

**Amount Obligated Under the Contract:** \_\_\_\_\_

**NOTICE OF DEFICIENCY ISSUED:**  YES  NO  
 Date: \_\_\_\_\_

**NOTICE OF ACCEPTANCE ISSUED:**  YES  NO  
 Date: \_\_\_\_\_

**REVIEWED BY:** \_\_\_\_\_    **DATE:** \_\_\_\_\_

**FOR AGENCY USE ONLY**

**SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.**



## REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of application receipt issued by Empire State Development (ESD).

Note:

Unless a Total Waiver has been granted, Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by the contracting entity, to determine M/WBE compliance.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL  
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**M/WBE AND EEO POLICY STATEMENT**

I, \_\_\_\_\_, the (awardee/contractor) \_\_\_\_\_ agree to adopt the following policies with respect to the project being developed or services rendered for (name agency/ies or project location) \_\_\_\_\_

**MWBE**

This organization will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from Agency(ies) and solicit bids from them directly.
- (3) Ensure that plans, specifications, requests for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhance participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**EEO**

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative for a statement that it will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_

By \_\_\_\_\_

Print: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison

He/she is responsible for administering the Minority and Women-Owned Business Enterprises-Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

20% Minority and Women's Business Enterprise Participation

10% Minority Business Enterprise Participation

10% Women's Business Enterprise Participation

**EEO Contract Goals**

\_\_\_% Minority Labor Force Participation

\_\_\_% Female Labor Force Participation

## WORKFORCE EMPLOYMENT UTILIZATION

<b>Contract No.:</b> <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	<b>Reporting Period:</b> <input type="checkbox"/> January 1, 20__ - March 31, 20__ <input type="checkbox"/> April 1, 20__ - June 30, 20__ <input type="checkbox"/> July 1, 20__ - September 30, 20__ <input type="checkbox"/> October 1, 20__ - December 31, 20__
<b>Contractor's Name:</b>	<b>Report includes:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
<b>Contractor's Address:</b>	

Enter the total number of employees in each classification in each of the EEO-Job Categories identified.

EEO-Job Category	Work force by Gender		Race/Ethnic Identification						Disabled		Veteran						
	Total Work force	Female (F)	White (M)	White (F)	Black (M)	Black (F)	Hispanic (M)	Hispanic (F)	Asian (M)	Asian (F)	Native American (M)	Native American (F)	Disabled (M)	Disabled (F)	Veteran (M)	Veteran (F)	
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary /Apprentices																	
Totals																	

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b> <b>EMAIL ADDRESS:</b> Submit completed form to: NYS Governor's Office of Storm Recovery, 25 Beaver Street, 5 <sup>th</sup> Floor, New York, NY 10004, or MWBE_EEOCreports@stormrecovery.ny.gov
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>	<b>DATE:</b>

**General Instructions:** The work force utilization is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total work force, the contractor and/or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total work force, information on the total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to the MWBE Program Management Unit within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a copy of the previously submitted report indicating no change with the date and reporting period updated.

**Instructions for completing:**

1. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
2. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
3. Check off the box that corresponds to the reporting period for this report.
4. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
5. Enter the total work force by EEO job category.
6. Break down the total work force by gender and enter under the heading "Work force by Gender"
7. Break down the total work force by race/ethnic background and enter under the heading "Work force by Race/Ethnic Identification".  
Contact the MWBE Program Management Unit at (518) 474-5513 if you have any questions.
8. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
9. Enter the name, title, phone number and email address for the person completing the form.  
Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

**WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

**BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.

**HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

**ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

**NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL**
  - any person who:
    - has a physical or mental impairment that substantially limits one or more major life activity(ies)
    - has a record of such an impairment; or
    - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN**
- **GENDER**
  - Male or Female
  - a veteran who served at any time between and including January 1, 1963 and May 7, 1975.

Failure to submit this form will result in non-compliance

Is this a final report? Check one.  
 Yes  No

M/WBE Quarterly Report  
 of

NYS AGENCY/AGENCIES Contract No. \_\_\_\_\_ Project No. \_\_\_\_\_

The following information indicates the payment amounts made by the grantee/contractor to the NYS Certified M/WBE subcontractor on this project. The payments as shown are in compliance with contract documents for the above reference project.

Contractor's Name and Address		Federal ID#	Goals/Dollar Amount	Contract Type:		
			MBE ___ % = \$ _____ WBE ___ % = \$ _____	Paid to Contractor this Quarter: Total Paid to Contractor to Date:		
		Project Completion Date	Work Location	Reporting Period:		
				<input type="checkbox"/> 1 <sup>st</sup> Quarter (4/1-6/30) <input type="checkbox"/> 3 <sup>rd</sup> Quarter (10/1-12/31) <input type="checkbox"/> 2 <sup>nd</sup> Quarter (7/1-9/30) <input type="checkbox"/> 4 <sup>th</sup> Quarter (1/1-3/31)		
M/WBE Subcontractor/Vendor	Product Code*	Work Status this Report	Total Subcontractor Contract Amount	Payments this Quarter	Previous Payments	Total Payments Made to Date
		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete	MBE WBE	MBE WBE	MBE WBE	MBE WBE
Name: Fed ID#:		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete				
Name: Fed ID#:		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete				
Name: Fed ID#:		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete				
Name: Fed ID#:		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete				
<b>Total:</b>						

Date: \_\_\_\_\_ Name: \_\_\_\_\_ Title: \_\_\_\_\_ Signature: \_\_\_\_\_ \*See Next Page for Product Codes

Use the following codes in the Product Code column to indicate the category of work for which the M/WBE was utilized:

**PRODUCT CODE KEY:**

A	<u>Agriculture/Landscaping (e.g., all forms of landscaping services)</u>
B	<u>Mining (e.g., Geological Investigation)</u>
C	<u>Construction</u>
C15	<u>Building Construction – General Contractors</u>
C16	<u>Heavy Construction (e.g., highway, pipe laying)</u>
C17	<u>Special Trade Contractors (e.g., plumbing, heating, electrical, carpentry)</u>
D	<u>Manufacturing (production of goods)</u>
E	<u>Transportation, Communication and Sanitary Services (e.g., Delivery services, warehousing, broadcasting and cable systems)</u>
F/G	<u>Wholesale/Retail Goods (e.g., gravel, hospital supplies and equipment, food stores, computer stores, office supplies)</u>
G52	<u>Construction Materials (e.g., lumber, paint, lawn supplies)</u>
H	<u>Financial, Insurance and Real Estate Services</u>
I	<u>Services</u>
I73	<u>Business Services (e.g., copying, advertising, secretarial, janitorial, rental services of equipment, computer programming, security services)</u>
I81	<u>Legal Services</u>
I82	<u>Educational Services (e.g., AIDS education, automobile safety, tutoring, public speaking)</u>
I83	<u>Social Services (e.g., counselors, vocational training, child care)</u>
I87	<u>Engineering, architectural, accounting, research, management and related services</u>



New York State  
Homes & Community Renewal  
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**EEOC Statement**  
of the  
New York State Housing Finance Agency,  
State of New York Mortgage Agency,  
New York State Affordable Housing Corporation,  
State of New York Municipal Bond Bank Agency,  
Tobacco Settlement Financing Corporation and  
Housing Trust Fund Corporation  
(individually, "Agency" and collectively, "Agencies")

It is the goal of the Agencies to ensure compliance with the federal Equal Employment Opportunity Act of 1972, as amended. Respondents with fifteen (15) or more employees responding to this solicitation, must submit a statement disclosing whether the Respondent: (a) is currently operating under or negotiating, or has at some time in the last five (5) years operated under or negotiated, a conciliation agreement with the Equal Employment Opportunity Commission ("EEOC"); (b) has been, at some time in the last five (5) years, or is currently the subject of a civil action brought against it by the EEOC; (c) has been, at some time in the last five (5) years, or is currently the subject of an action brought against it by the EEOC for permanent, temporary or preliminary relief; (d) has operated, at some time in the last five (5) years, or is currently operating under an order of a court to take affirmative action as a result of a civil action brought against it by the EEOC.

Please answer the above question either in the affirmative or negative.

\_\_\_\_\_ Respond YES or NO.

If YES, provide explanation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date of Respondent's Signature

\_\_\_\_\_  
Print Name of Respondent

**PART 6C. Construction Requirements and  
Procedures for Contracts with HTFC**



New York State  
**Homes & Community Renewal**  
 Office of Fair Housing and Equal Opportunity  
 Web Site: [www.nysfcr.org](http://www.nysfcr.org)

**CUMULATIVE PAYMENT STATEMENT**  
 (Instructions on Reverse Side)

Contractors Name and Address:	Federal ID #	Goals		Reporting Period	
		MBE ___%	WBE ___%	Quarter	Year
SHARS/Project #		Work Location			
Name of Firm and Address <i>(List All Firms)</i>	Type of Service Provided <i>(Select only one)</i>	NYS Certified MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Payment This period	Contract Amount	
	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/> <input type="checkbox"/>	No Payment <input type="checkbox"/>		
	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/> <input type="checkbox"/>	No Payment <input type="checkbox"/>		
	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/> <input type="checkbox"/>	No Payment <input type="checkbox"/>		
	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/> <input type="checkbox"/>	No Payment <input type="checkbox"/>		

Signature of Company Official \_\_\_\_\_ Print Name of Company Official \_\_\_\_\_ Date \_\_\_\_\_

**INSTRUCTIONS FOR FILING CUMULATIVE PAYMENT STATEMENT**

This document pertains to **HCR funding only**: The form is to be completed and signed by the Company Official and submitted by the **10<sup>th</sup> of each quarter**. The form must include **ALL** (e.g. **MBE, WBE and non-M/WBE**) subcontractors or suppliers assigned to this contract. The Affirmation of Income Payments to MBE/WBE (ADM-146) must accompany this form for each MBE/WBE firm who has received payment.

Quarter	Reporting Period	Due Date
1st	April 1 – June 30	July 10
2nd	July 1- September 30	October 10
3rd	October 1 - December 31	January 10
4th	January 1 – March 31	April 10

- Contractor's Name & Address:** Indicate name, address, city, state and zip code.
- Contractor's Federal ID #:** If Federal ID # not assigned, provide Social Security # of the owner.
- Goals:** Indicate HCR's assigned MBE and WBE participation goals.
- Reporting Period:** Indicate reported month and year.
- SHARS/Project #:** Indicate HCR's SHARS #/Project #.
- Subcontractor or Supplier Name & Address Federal ID #:** Indicate the name, address, city, state and zip code.
- Description of Work:** If Federal ID # not assigned, provide Social Security # of the owner.
- NYS Certified:** Check the box that best describes the work performed. (CHECK ONE BOX ONLY)
- Payments This Period:** Indicate if MBE or WBE. (CHECK ONE BOX ONLY) Only firms certified by NYS will be counted towards goals  
Indicate amount paid to each subcontractors or suppliers this reporting period.

**NOTE: IF THERE WAS NO PAYMENT THIS PERIOD, PLEASE CHECK THE BOX.**

**Contract Amount:** Indicate total contract amounts or purchase agreement(s) for each subcontractor or supplier.





**New York State**  
**Homes and Community Renewal**  
*Office of Fair Housing and Equal Opportunity*  
 Website: [www.nyshcr.org](http://www.nyshcr.org)

## MONTHLY EMPLOYMENT UTILIZATION REPORT

(Instructions on Next Page)

<b>Project Name:</b>		<b>Reporting Period:</b>	From:	To:
<b>Contractor/ Firm Name:</b>		<b>Address:</b>		
<b>Federal ID/SS#:</b>		<b>SHARS #:</b>	<b>Location of Work:</b>	
<b>Labor Amount:</b>	\$	<b>Construction Start Date:</b>		<b>Percent of Job Complete:</b>

<b>TOTAL NUMBER OF EMPLOYEES FOR THIS REPORTING PERIOD</b>												
Job or Trade Category	Total Number of Employees		Black or African American		Hispanic or Latino		Native Hawaiian or Other Pacific Islander		Native American or Alaskan Native		Asian	
	M	F	M	F	M	F	M	F	M	F	M	F
Professionals												
Technicians												
Office/Clerical												
<b>Construction Trade - List Each</b>												
<b>Grand Totals</b>												

Company Official's Name: \_\_\_\_\_ Title: \_\_\_\_\_

Company Official's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_



**NOTE: Failure to submit this form will result in non-compliance.**

### **INSTRUCTIONS FOR FILING MONTHLY EMPLOYMENT UTILIZATION REPORT**

The Monthly Employment Utilization Report (ADM-136) is to be completed and signed by the contractor or subcontractor and **submitted by the 10<sup>th</sup> of each quarter** for the duration of this contract. This report covers all hourly workers, including foremen, supervisors or crew chiefs, journey workers and apprentices or trainees working on the project. Professionals, technicians and office clerical field office staff working on the contract should also be reported.

- Name of Project: Indicate the Name of Assigned Project
- Reporting Period: Indicate reported month and year.
- Contractor or Subcontractor Name: Indicate name, address, city and zip code.
- Federal ID Number: If Federal ID # not assigned, provide Social Security # of the owner.
- Labor Amount: Indicate dollar amount allocated for labor on the Detailed Estimate.
- SHARS Number: Indicate HCR assigned SHARS #.
- Location of Work: Indicate county where project is located.
- Contract Start Date: Indicate date construction actually began.
- Percent of Job Complete: Indicate the estimated percentage of job completed.
- Job or Trade Category: Indicate the total number of employees for the field office staff, including supervisory personnel and administrative staff at the job site. Indicate the number of employees for each construction trade.
- Total Number of Employees: Indicate the total number of **all** employees, regardless of ethnicity, under each trade category for all males (M) and all females (F). **Note: These two columns include the number of employees for the entire workforce.**
- Total Number of Employees Minority & Females: Indicate the total number of employees for each minority group member(s) under each trade category for all minority males (M) and all females (F). **Note: These columns include only the minority workforce.**
- Grand Totals: Total of columns under each trade category for all males (M) and all females (F).

**The company official's name, title and telephone number should be printed or typed at the bottom of the form.**